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REPORTS

NOTES OF THE WEEK

Suspicion of Adultery

Adultery is rarely proved by the evidence of eye-witnesses, and generally it is a matter of inference from proved facts, such as opportunity and facts pointing to a guilty relationship. As was held in *England* v. *England* [1952] 2 All E.R. 784; 116 J.P. 584, evidence of strong inclination combined with opportunity raises a presumption of adultery which may be rebutted by evidence to the contrary. In *Corke* v. *Corke and Cooke* [1958] 1 All E.R. 224, Hodson, L.J., observed that in this case no doubt there was opportunity for adultery, but that there was no evidence from which he was prepared to draw the inference of inclination to commit adultery.

Obviously proof of opportunity alone is not enough, and it is equally true that evidence of inclination without evidence of opportunity is also insufficient. In *Cox* v. *Cox* (*The Times*, February 1) the Divisional Court (Lord Merriman, P. and Collingwood, J.) allowed a wife's appeal from the decision of justices who dismissed her application for an order on the grounds of her husband's desertion and neglect to maintain. The defence, argued on the lines of *Glenister* v. *Glenister* [1945] 1 All E.R. 513; 109 J.P. 194, was that the husband was justified by his reasonable belief that his wife had committed adultery, or that at all events her conduct justified him in living separate and apart from her. The husband rested his belief on a statement made by his wife to his sister about her conduct with a man who was employed at the same works with her, and who kissed and embraced her in the canteen, so as to cause sexual excitement. This took place in the daytime, and there was no evidence of any association between the two at any other time or place, and in the opinion of the Court the circumstances precluded the commission of adultery there and then.

In the course of delivering the judgment of the Court, Collingwood, J., said that assuming that what the wife had said did amount to evidence of an inclination to commit adultery as distinct from a willingness to indulge in amorous dalliance falling short of adultery, the necessary element of opportunity to indulge the inclination could not be left to be inferred in the absence of any evidence to support it.

Sentences Reduced

In the Court of Criminal Appeal on February 3 there were two instances of noteworthy reduction of sentence. In *R.* v. *Palmer*, a sentence of 10 years' preventive detention, passed for bigamy, was altered to one of 12 months' imprisonment. The appellant was said to have a very bad character and eight convictions for serious offences. The Lord Chief Justice said the bigamy was not particularly aggravated, and his other offences had nothing to do with bigamy. The appellant was not a professional bigamist. His wife had suffered no hardship, because she had gone off with another man, and the second woman was willing to stand by him.

The second case, *R.* v. *Smith*, was one of manslaughter, and the sentence was reduced from seven years to 18 months. The Lord Chief Justice said that the Judge who had tried the case had written to the Court and told them that he had further considered the matter and thought that the sentence was too much. Having related the facts of the case the Lord Chief Justice said the appellant, a man of excellent character, had not intended in the least to kill the woman when he gripped her by the throat after an argument, and it was mere bad luck that this happened.

Publicity in an Adoption Case

We were surprised recently to see a report in a daily newspaper which gave full particulars of an adoption case in a juvenile court. Names and addresses of the adopters, of the parents and the child, and other details of the case were given. Apparently the reporter was not in court himself, but gathered his information from some of the people who were concerned in the case.

All adoption cases must be heard *in camera*, and the press must not be admitted (*see* r. 13 of the Adoption of Children (Summary Jurisdiction) Rules, 1949, so far as juvenile court cases are concerned.) Section 49 of the Children

and Young Persons Act, 1933, applies to any proceedings in a juvenile court and therefore to adoption proceedings there. It provides that "no newspaper report of any proceedings in a juvenile court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of any child or young person so concerned in any such proceedings as aforesaid: provided that the court or the Secretary of State may in any case, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of this section to such extent as may be specified in the order."

Attempted Bribery of a Driving Examiner

We hope that an occurrence such as is reported in *The Birmingham Post* of January 17, 1958, is a rare one. A woman was fined £10, with £5 5s. costs, for offering a bribe to a Ministry of Transport driving examiner. She had taken a driving test and had been told by the examiner that she had failed. She seemed upset by this and said that it was her third test and she then took a number of treasury notes from her purse and said to the examiner, "Go on, on my honour I will not tell anyone and there is only me and you here." When the examiner handed her a statement of failure form she said, "Go on, change your mind. This means nothing to you and a lot to me," and she put some notes (£3 10*s*.) into his hand.

It is always a serious offence to try to bribe an official to do something which is contrary to his duty and in the case of a driving examiner the circumstances (which the defendant stated "there is only me and you here") make the full offence all too easy to commit unless examiners are honest men not prepared to give way to such temptations. It is utterly wrong for disappointed candidates to put the temptation in their way, and it is important that courts should recognize the seriousness of the offence when any cases are brought before them. Our readers may remember that we called attention to another case at 119 J.P.N. 745, and we think it right again to emphasize the importance of discouraging firmly all such attempts. It has to be remembered that if the full offence is committed it is most unlikely that anyone will hear about it since both parties will be concerned to ensure that it is not discovered.

Leaving it to the Other Fellow

Every road user should have a sense of personal responsibility for his conduct on the road. He should try to ensure that nothing which he does will endanger or embarrass any other road user. But the really good driver goes further than this by making allowance, in advance, for the possible mistakes and failings of others. Unfortunately there are drivers, and pedestrians, who take advantage of this extra care by taking a chance and leaving it to the other fellow to see that no accident results. The December, 1957, issue of the West Riding Constabulary's Road Safety Notes gives an example of this kind of conduct.

Two drivers were approaching a Y junction. The right fork of the Y was closed for repairs and a notice giving this information was posted in advance of the junction. The leading driver, as he approached the junction, was not concentrating on his job but was talking to his passenger. He failed, therefore, to see the notice and moved over to his right to drive into the right fork. The following driver did see the notice and saw also what the driver ahead had done. He realized that this driver would have to come back into the near side stream of traffic and, guessing by that driver's failure to heed the notice that he might do something else which he should not do, the following driver slowed down. His anticipation was correct. With no indication that he had any interest in what might be following him the leading driver, when he found that the right fork was closed, veered sharply to his left to enter the left fork. But for the good judgment of the following driver a collision would have occurred, but the leading driver went on his way without a backward glance, unconscious apparently of the fact that he had nearly caused an accident. The following driver showed the virtues of concentration and of consideration for the mistakes of others. The pity is that the lesson was lost on the offender.

Driving Too Fast

Rigid speed limits have some effect in preventing dangerous driving, although in a great many cases in which motorists are prosecuted for exceeding such limits, the police say, if asked by the court or by the defence, that on the occasion in question no danger was caused. This may be due to the fact that it is more profitable to have what are called "speed-traps" in places where there is a good stretch of clear road which tempts drivers to ignore the limit, they realizing that no special danger is involved if they do so. Nevertheless they are, of course, breaking the law and have no just cause for complaint if they are caught and fined.

But there is a danger in fixed speed limits in that it makes some drivers think that the limit is the minimum at which anyone should drive and they will try to push off the road anyone who is driving at any lower speed. The fact is that on many occasions and in certain conditions the limit is not a safe speed and it would be far better, in some ways, if drivers could be trusted to fix their own limits, suitable to the circumstances and to the vehicles which they are driving, and if there were more prosecutions for careless driving, dangerous driving and, particularly, driving at a dangerous speed in place of some which are now brought only on the ground that a speed limit has been exceeded.

The same principle of a safe speed, having regard to the vehicle and to the circumstances, applies to driving on the open road. The November, 1957, Road Safety Bulletin of the Derbyshire constabulary depicts a plan of a stretch of road near Brailsford on which a number of accidents have occurred. There is a bend in the road. Correct signs clearly indicate the presence of this bend, and the bend is banked to assist drivers to negotiate it. The hedges are kept low to give drivers the best opportunity to get an early view of the nature of the road ahead. Apparently, however, drivers will try to take this bend too fast, and accidents result. Some motorists will argue that the road conditions there should be altered to allow for greater speeds with safety, but we do not accept this argument. A driver must always drive, if he is to be a safe driver, within the capacity of his vehicle and at a speed no greater than that at which he can keep the vehicle under full control. The speed must be regulated to suit the road conditions, not the road conditions altered merely to allow for greater speed.

Evidence to Disprove Adultery

A difficult question as to the admissibility of evidence revealed a difference of opinion between Judges in the Court

of Appeal, although in the result all three Lords justices were agreed that the appeal should be dismissed.

The case was *Corke* v. *Corke and Cooke* [1958] 1 All E.R. 224, in which the husband appealed against the dismissal by the Commissioner of his petition alleging adultery by his wife with the co-respondent, and the particular point of importance was whether certain evidence adduced by the wife was admissible.

The husband and an inquiry agent kept watch one night at the house where the wife was living and the co-respondent was a lodger. They heard conversation in the co-respondent's bedroom; the wife, hearing a noise, came downstairs and confronted the husband and the inquiry agent, who accused her of adultery, which she denied. Shortly after they had gone, she and the co-respondent went to a telephone box, and she asked her doctor to come and examine her and the co-respondent to prove that sexual intercourse had not taken place. He refused to come saying that his evidence would be valueless. Hodson and Sellars, L.JJ., held that the evidence was inadmissible since statements by a party to an alleged act of adultery, made afterwards to third persons and tending to show that adultery had not been committed, were of no probative value. In the course of his judgment Hodson, L.J., said, "This offence could be proved by admissions tending to show that it had been committed but cannot be disproved by statements of the person charged afterwards made to third persons tending to show that it had not been committed. It appears from the authorities that the rule is justified by the risk of fabrication."

The Dissentient View

Whereas the other members of the Court were of opinion that evidence of such statements had no probative value and were inadmissible, Morris, L.J., thought they were admissible and that the question was rather a matter of weight than of admissibility. He held that if conduct which suggests guilt may be proved, so may conduct which suggests innocence. If the wife and the co-respondent genuinely believed that immediate examination by a doctor could show whether or not intercourse had taken place, then their willingness to be examined ought not to be regarded as irrelevant. "If such willingness may fairly be regarded as an indication of innocence then the best of reasons exists for bringing it to the consideration of a court whose solemn duties include both clearing the innocent and convicting the guilty."

Byelaws against Litter

The report of the National Parks Commission expresses a preference for a general statutory prohibition of litter as against local byelaws, adding that magistrates would probably enforce a statute more vigorously than a byelaw.

There is undoubted advantage in a statute that applies everywhere instead of byelaws in some areas and none in others, but whether magistrates show lack of vigour in enforcing byelaws we do not know. There is no sufficient reason why they should not enforce them, for a byelaw duly made and *intra vires* is not to be disobeyed with impunity. In the case of a byelaw, however, the defendant may plead that he did not know there was any law against litter in the area in question, adding that there is none where he lives. That is no defence, and not a good excuse, since the litter habit is reprehensible whether it happens to be against the law or not. None the less, that kind of defence is put forward quite seriously by people who see no harm in disfiguring streets, parks and the countryside by their failure to show consideration and good manners. It is possible also that the ordinary man, though not the magistrate experienced in such matters, will have less regard for a byelaw made by a local authority than for a law made by a more august assembly. A byelaw can be challenged as *ultra vires*: not so an Act of Parliament.

Securing Attendance of Witnesses

When a man applied to a metropolitan magistrate for six witness summonses he was asked the usual question: have you asked them to attend and have they refused? To this the applicant replied that his legal advisers had told him not to contact the witnesses at all. Asked who were these advisers, he named a trade union, and the magistrate told him to go back and tell them they were wrong.

If indeed the man had been told not to communicate with his witnesses at all the advice was wrong. A witness summons can be granted under s. 77 of the Magistrates' Courts Act, if the magistrate is satisfied that the witness will not attend voluntarily. Therefore the ordinary procedure is to request the witness to attend, and only if it appears that he will not do so is it proper to apply for a summons. Possibly the applicant was told he had better not make contact with the witnesses because it was considered undesirable that he should talk over the evidence with them, and he took this as meaning he was not to approach them even for the purpose of securing their attendance. There was room for some misunderstanding.

Unaccountable Offences

For most crimes there is a fairly obvious motive. Crimes of dishonesty can generally be traced to the desire to get something for nothing or even to make a living without working. Occasionally such offences baffle understanding, and it appears that they must be due to some obscure cause, possibly mental abnormality.

The Birmingham Post recently reported a case at Newcastle-under-Lyme quarter sessions in which the wife of a mining engineer pleaded guilty to shoplifting and asked for nine similar cases to be taken into consideration. She was sent to prison for two years on four charges.

A police officer described her as a professional shop-lifter and it was stated that she had been previously convicted.

The extraordinary feature of the case was that the prisoner was said to have had £30 a week housekeeping money, and £29 in her handbag when she was arrested. When police officers with a search warrant visited her home they found a hoard of goods including food, chocolate and wrist watches. The house was full, it was said, of new goods of every description. Counsel for the defence said she had been known to take cutlery off her own table and conceal it.

The real cause of the offences must, it would seem, be something in the mental or physical condition of the woman, since there is nothing in her circumstances as reported to account for them, and she appears to have made little or no use of property that she took. In prison she will no doubt be under the care and observation of medical officers who may be able to help her.

Masquerading

The idea that it is an offence for a man to wear female attire in public or for a woman to wear male attire in public still exists, although such conduct does not of itself constitute any

offence known to the law. The wearing of clothing of the opposite sex may, however, be incidental to the commission of various offences, including blackmail of the worst kind. We were puzzled by a passage in a recently published book, in which the author recounted the story of a girl, who was according to this book, sent to borstal many years ago for masquerading in male dress. So far as appears, the girl was of good character and had not been in any trouble before. In order to get work more easily, and being a girl of considerable strength, she decided to work in a coal mine, where she did quite well. Her appearance was not feminine or pre-possessing, and no suspicion arose about her sex. One day she was taken ill in the mine and had to be removed to hospital. There she told the doctor her true sex and the matter was reported to the police, who took action. She was sent for trial at quarter sessions and sentenced to borstal detention. There she did quite well, and apparently settled down upon her release.

That, in outline, is the story as told. We are left wondering what really happened and what was the charge.

Although masquerading is in general no crime there are various statutes creating offences relating to the wearing of the uniform of the armed forces or the police by those not entitled. Masquerading in some particular dress, *e.g.*, the cap and gown of a commoner of a university, has been held to be a false pretence where it was used for the purpose of obtaining goods from a tradesman, *R.* v. *Barnard* (1837) 7 C. and P. 784.

Food and Filth

Some years ago we spoke at length about food hygiene, with particular reference to what might be done by shop-keepers themselves, and by local authority inspectors, without incurring or imposing disproportionate expense. Thinking on the same lines, we were not happy over the decision of the Divisional Court in the *Coventry* case, which appeared in the daily newspapers towards the end of last year. Our own full report is now available at 122 J.P. 18, and we remain rather apprehensive, lest the result may prove discouraging to local authority officials who have been trying to improve the standards locally observed. Let it be said at once, and with all emphasis, that it was accepted on all hands that MacFisheries, Ltd., had done everything that the best advice available suggested, with a view to preventing contamination of their merchandise. If anything was wrong, it did not arise from neglect or from reluctance to make everything as right as possible. No less than £8,000 had been spent upon the fittings of the shop, which was claimed to be the best equipped in England. This being so, the city council's officials showed courage in selecting the firm for prosecution. Perhaps it was felt that if proceedings were taken against a firm of such high reputation, in respect of a new shop expensively equipped, there could never in future be any suggestion of favouritism. The equipment ensured that much of the fish and fish products visible to customers was protected against contamination of all sorts. Much of the fish, moreover, was exposed in small quantities which would be quickly sold, when the trays or slabs would be replenished from cold storage. In any event, wet fish on a slab, and lobsters and their kind, are (presumably) little the worse for the dust and dirt which may fall on them in spite of all precautions, during their short stay in a shop, because in the nature of things they will soon be washed and cooked. There were, however, also in the shop fish cakes and other prepared goods, which might have been more liable to provide bacteria with opportunities to multiply, and would, before consumption, neither be washed nor cooked (if at all) at a high temperature.

So far as can be seen from the report, the defence admitted that foreign matters might fall upon some of the goods exposed, but argued that no danger to health had been established from this fact. The prosecution thereupon relied upon the contention that the Food Hygiene Regulations, 1955, made it an offence to allow food to be contaminated at all when exposed for sale, and that for securing a conviction it was not necessary to prove that the contamination was prejudicial to health.

The magistrates accepted this contention on the law, but were overruled upon Case Stated. The decision of the Divisional Court was given on the ground that the Minister's power of making regulations was stated by Parliament in s. 13 (1) of the Food and Drugs Act, 1955, to be conferred for the protection of the public health, and he therefore had no power to forbid contamination which was not dangerous to health.

Before this decision, we should have doubted whether there could be contamination which was not dangerous or prejudicial. If some harmless substance finds its way into human food, we do not think that in ordinary language the latter would be said to be contaminated. This, however, is a point of law which we must take it has been decided against our own opinion. It is easy to be wise after the event, and such facts as are available in the full report suggest that at Coventry the prosecution might have done better to fight the case not only on the point of law, but on the facts. It is said in the report that some of the food could have been touched by customers; some was at the level where a child could breathe on it, and there was a possibility that a customer's sleeve or a woman's bag when she leaned across the counter could come into contact with it. Considering that the bag might have been standing on the floor, and that the sleeve would unavoidably have collected some dust and dirt in public transport, it might have been possible to convince the magistrates that there was a risk in fact. If this line had been taken, and they had convicted on this ground, it would have been unnecessary to rely upon the legal argument which eventually failed.

We hope that local authorities and their staffs will not allow themselves to be discouraged by the Coventry decision. Firms large and small have certainly done much to improve their fittings in the last few years, and some have even managed to educate some members of their staff out of some disgusting habits. But cooked ham and sliced meat pies are still left exposed to wind-blown ordure from the street and to catarrhal excrement from customers and staff. Meat is still put into sandwiches by hand, and bread and pastry are still handled, by the same staff who handle money. The vanman unloading his trays of unwrapped cakes still lowers them on to the pavement, and leaves the van door open in a swirling gale. These practices continue in central London, and are followed by the staff of companies whose activities are nation-wide. What happens in the back streets and remoter districts is likely to be even worse. In short, any ordinary person who looks into a shop where prepared food or half cooked food is exposed for sale is likely to see plenty of opportunities in any town for a prosecution to succeed upon the facts.

CONSENT OR NO

[CONTRIBUTED]

In a recent case tried at the Central Criminal Court two young men were found guilty of robbing contrary to s. 23 (1) (*a*) of the Larceny Act, 1916, in the following circumstances: A, a male prostitute, took C to B's flat, indecency there took place and then B appeared, having been hidden in the room all along or having just entered. Holding a tin-opener in his hand in a threatening manner B told C to pay A and get out. C tendered 10*s*. which was refused. B then produced traveller's cheques, belonging to C, who signed two for a sum three times as large as A's own estimate of the value of his services. A further allegation that £3 had been stolen from C's trousers pocket was not left to the jury for want of definite evidence that he had that sum when he entered B's flat.

The defence was a denial of the use of the tin-opener or of threats and an allegation that a voluntary payment was made by C for services rendered.

C in the box was calm and candid. He said he had expected the indecency to be mutual without any payment by either party, that he never expected to lose his money as even if he did not stop the cheques in time he believed the issuing bank would not charge him for cheques stolen from him. His signatures and dates on the cheques were written beautifully; the name of the town had not been entered in the space provided but this omission is understood to be normal. Questioned by the Judge C said that he was not ashamed of his sexual perversion, but that he was somewhat embarrassed at having to tell the police about it.

To one at least of those present in court it appeared that C had never in fact been put in physical fear by A and B (although he did point out that the tin-opener could cause an unpleasant injury to his face) and that he signed the cheques with the mixed object of getting out of the flat without trouble and of obtaining his revenge by the subsequent conviction of A and B and in the belief that he was not going to be the loser of more than two bits of paper.

The jury presumably believed that the tin-opener had been used in a threatening manner and this would at first sight justify the verdict of guilty of robbery whether or not the victim was put in fear, it being "sufficient that so much force, or threatening by word or gesture, be used, as might create an apprehension of danger, or induce a man to part with his property without or against his consent," 4 *Blackstone* 242.

Robbery "is a felonious taking of money or goods, to any value, from the person of an other, or in his presence, against his will, by violence or putting in fear. It is not necessary that actual fear should be laid in the indictment or strictly or precisely proved, provided the property be taken with such circumstances of violence or terror, or threatening by word or gesture, as would in common experience induce a man to part with it from an apprehension of personal danger; for the law, in *odium spoliatoris*, will presume fear where there appears to be so reasonable ground for it. But it is necessary that it be taken against the will of the party," 2 East P.C. 707, 711, and in the case under discussion it might be doubted whether the taking was sufficiently against the will of C to constitute robbery.

In *R.* v. *Blackman* (1787) 2 East P.C. 711, where the prisoner assaulted a woman with intent to rape her, and she, without any demand from him, offered him money, which he took and put in his pocket and then continued to treat her with violence to effect his original purpose until interrupted by the approach of another person, it was held that the taking of the money was robbery, the woman having offered it only to protect her chastity.

In *R.* v. *Jones, alias Evans* (1776) 2 East P.C. 714, the prisoner accused his victim of indecent liberties, threatened to raise the mob and suggested a present. He took such money as the victim had with him and called at his house the next day for more. It was held that "to constitute robbery there was no occasion to use weapons or real violence; but that taking money from a man in such a situation as rendered him not a free man; as if a person so robbed were in fear of a conspiracy against his life or character, was such putting in fear as would make the taking of his money under that terror a robbery." The sufficiency of fear of loss of character is also illustrated in *R.* v. *Hickman* (1783) 2 East P.C. 728 and *R.* v. *Donnally* (1779) 1 Leach 193, more fully reported at 2 East P.C. 715.

Where the prisoners procured two men to rob one of their number in order that they might obtain the reward for the arrest, it was held that no robbery was committed as the victim consented and his property was not taken from him against his will, (1755) 19 State Trials 745. The prisoners were subsequently convicted on a fresh indictment of conspiracy to unjustly and wickedly procure statutory rewards and were sentenced to imprisonment and the pillory (in which one died and another was seriously injured). The case of *Norden*, 2 East 666, was distinguished as there was no agreement between the parties and nothing to remove or lessen the difficulty or danger to which Norden (Norton) might be exposed in going out in a coach specially to lure and arrest a highwayman.

In *R.* v. *Eggington and Others* the prisoners invited a servant to assist them in their plan; the servant informed his master, who directed him to carry on in order that the prisoners might be caught in the act. The servant opened the door of premises to admit the prisoners, who were as a result convicted of burglary. On a Case Stated the Judges agreed that there was no burglary as the premises concerned was not a dwelling house but recommended the prisoners to mercy on condition of being transported for seven years,the punishment they would have been liable to for the larceny. The headnote to the report of this case in 2 Leach 193 reads: "The assent of a prosecutor, to give facility to the commission of a larceny, for the purposes of detecting the offenders, does not do away with the felony, although the property was not taken against the will—Not having done anything to induce it—Pardoned on condition of being transported."

Where, in *R.* v. *Lawrence* (1850) 14 J.P. 561, the prisoner suborned the servant of the owner of a deed to steal it for him and the servant, on the instructions of his master, gave him the deed, it was held that if the servant laid the deed upon the counter and the prisoner took it up, a larceny was made out, but that if the servant gave it into the hands of the prisoner, there was no taking and consequently no larceny. *See* also *R.* v. *Simmons* (1848) 13 J.P. 90, and *R.* v. *Williams* (1843) 1 Car. & K. 195. The same, perhaps rather pedantic, insistance on a factual moving of the property

while still in the possession of the owner saved Turvey from the consequences of the jury's view of his conduct [1946] 2 All E.R. 60; 110 J.P. 270.

At every session of the Central Criminal Court a number of postal officials are found guilty of larceny of test packets deliberately put in their way in order that they may be caught with the property in their possession (or cleared of suspicion).

Granville Williams, *Criminal Law*, General Part, 610–612, expresses the opinion that a form of non-consent in law has grown from the inconvenience of any other interpretation of the facts in such cases. With due respect to such authority, and despite *R.* v. *Fuller* (1820) R. & R. 408 (parting with property upon a charge of unnatural crime will not make the taking a robbery, if it is parted with not from fear of loss of character, but for the purpose of prosecuting) is it not that, leaving aside the cases arising from mistake, there is no consent, either in fact or in law, to the taking of property where the owner knowingly allows his property to be removed without any intention of allowing the taker to get away with it and intending to recover it as soon as may be convenient to his purpose, and that the taker, *animus furandi*, in such circumstances is guilty of larceny or robbery as the case may be.

CRIME AND PUNISHMENT

In *The Times* of November 27, 1957, there appeared an article entitled "*Penalties to fit the Crime*." The writer was Dr. Hermann Mannheim, and the point of view advanced by him was one which demands close scrutiny by all concerned with the administration of the criminal law. Dr. Mannheim's arguments were centred upon two main propositions: (i) that after a finding of guilt, whether by the court after a full trial, or whether upon the defendant's plea of guilty, there should be an exhaustive inquiry into the defendant's antecedants and psychological disposition, and that the results should be used in framing the sentence of the court; and (ii) that "equal cases" should receive "equal treatment." As a corollary to the second proposition Dr. Mannheim demanded the establishment of "criteria . . . for assessing whether two cases and two sentences can be regarded as equal."

Readers of the article may have been struck by the writer's failure to make any distinction between different classes of offence when urging the importance of full background inquiries before passing sentence. As Dr. Barbara Wootton pointed out in a recent article in *The Twentieth Century*, traffic offenders form by far the largest group with which the criminal courts have to deal. The range of gravity within the group is very wide—from unlawful parking to causing death by dangerous driving, or even manslaughter. Occasionally it may appear in the course of a prosecution for one of the more serious driving offences that the defendant's physical or mental condition was at least a contributory factor to the act complained of: in such cases the court may remand for a medical examination whose results may well assist in deciding whether or not the defendant should be disqualified from holding a licence; but it must surely be agreed that the overwhelming majority of traffic offences can be properly dealt with by penalties imposed on the date of conviction. We feel pretty confident that Dr. Mannheim would concede this: the point is mentioned straight away in order to underline the disadvantages of advancing the arguments put forward in his article without in any way indicating the offences to which he would wish them to be applied.

Apart from traffic offences in all their lamentable profusion, there are a great many others in which remand for inquiry would be either totally unnecessary, or, if carried out, would produce prodigious congestion in the work of the courts. We have in mind offences against the licensing laws, the customs regulations, the National Insurance Acts, and minor offences to do with Post Office and wireless matters. It may be that Dr. Mannheim would further concede that pre-sentence inquiries are not called for in most—or all—of these cases, but if he does go so far it is a pity not to say so.

It is greatly to the advantage of the efficient exercise of the judicial function that courts should strike a balance between the offence and the offender. In some cases—simple drunkenness, for example, the emphasis is placed on the offence: elaborate inquiries about the defendant's antecedents are surely not called for—and would probably be resented by the defendant: such inquiries cost time and money and the courts are surely right to limit their incidence. In other cases more weight is given to the individual circumstances of the defendant, and it is this which inevitably leads to great variation in the penalties imposed by courts for what, from a bare newspaper report, may seem very similar cases. To take a simple instance: nowadays it is most improbable that a court would pass a sentence of imprisonment upon a first offender found guilty of stealing a bottle of milk from a doorstep. But if the defendant is a specialist in this type of offence, and has been put on probation or discharged conditionally for previous activities of the same kind, the fact that he is hard up or has an invalid wife may well fail to save him from a prison sentence.

It may well be that Dr. Mannheim is mainly concerned with felonies and misdemeanours, but even if this is the case there are two important aspects of the problem of sentence to which we think he has given insufficient attention. The word "deterrent" is absent from his article, as it is from the writings of many who discuss court work from the outside. But deterrence remains a very important aspect of sentencing policy: the Court of Criminal Appeal emphasizes constantly its validity. Even more significantly, Parliament itself takes a hand. For what reason was the Prevention of Crime Act, 1953, placed upon the Statute Book? It was to enable the courts to deal more adequately—*i.e.*, more severely—with people found guilty of carrying offensive weapons without lawful excuse. The Act was Parliament's response to a state of affairs in our streets and public places which was felt to be intolerable.

Again, why were increased penalties for many driving offences incorporated in the Road Traffic Act of 1956? Why does the Wolfenden Committee (certainly not a fierce-minded body) recommend much higher penalties for street soliciting? . . . For deterrence; that is the answer, and in making it we come to one of the two central flaws in any approach to penology which would look at the question of sentence solely from the point of view of the supposed needs of the offender, and which, in its confidence that such needs could be precisely ascertained, would ordain a system of "equal treatment of equals"—to use Dr. Mannheim's phrase.

The criminal courts have always regarded some offences as more serious than others: a trite observation, but, in face

of Dr. Mannheim's arguments, a necessary one. For it carries with it the corollary that a convicting court *must* look at the offence as well as the offender. Our criminal law embodies two aspects of judgment: the condemnation of the *offence* is a social act in which magistrates or Judges are the instruments of a common will. The punishment of the *offender* is at once an aspect of this social force and a more individual facet of judgment in which, *as far as the circumstances of the case allow,* the court is able to concern itself with the needs of an individual. The social condemnation of an offence *may* be so severe and uncompromising that any question of dealing leniently with the individual offender *for reasons peculiar to him* must be abandoned.

We cannot help being disappointed over Dr. Mannheim's failure to comment on the problem of sentence in the light of this double rôle of the judiciary—as keeper of the social conscience and as intermediary for the defendant's needs. It is significant that he prefers the word "treatment" to "punishment." One "treats" a person who is suffering from some complaint or injury. Does Dr. Mannheim subscribe to the view that crime is an aspect of disease? If he does, then eventually he must demand far more sweeping changes than he suggests in his article. One cannot be "guilty" of an illness. If he does not—and such is our hope—then perhaps he will agree that "treatment" is an equivocal term for him to use.

In his recently published book, *The Sentence on the Guilty,* Mr. Claude Mullins was careful to distinguish the type of case where leniency can be justified from the kind where for one reason or another, society must express its disapproval and punishment. Thus we find him saying that "all our criminal courts have many opportunities for separating those who can be trusted with another chance from those on whom punishment must be inflicted." As regards the scale of the punishment there is, of course, plenty of room for adaption to individual needs: but let us not fall into the delusion that a sentence of six months' imprisonment for driving whilst disqualified by court order, or for living on immoral earnings, is anything other than plain punishment. "Treatment" is not a happy synonym even for probation: far better to use the term carefully provided by law: for "probation"—a period of proving—exactly describes its own nature. As for a discharge conditional, it is not "treatment" at all: it is just what it says—a release from penalty on terms of future good conduct.

For all the innumerable cases where a defendant's previous record, the nature of the offence, and the defendant's attitude to it, combine to allow a court to believe that leniency of one kind or another is justifiable, there must remain many crimes—even if committed by a first offender—which demand punishment as a recognition (*a*) of the intrinsic quality of the offence as being abhorrent to the good society, and (*b*) of the need to deter others. One thinks in this context of the hitherto trusted servant who absconds with his firm's money; or of the teacher who indecently assaults his pupils. This type of happening strikes at the roots of social order: to palliate it in terms strictly personal to the defendant is to ignore its wider implications. To blur the social sanctions inherent in the penal code in the pursuit of so-called "expert" guidance which would seek a theoretically perfect sentence in terms of the defendant's alleged requirements (even assuming that these can be definitively ascertained in the short time available on remand) would undermine the whole status of criminal law as a social instrument: it would make it a kind of health service.

But what of the plea for equal sentence for like offences? Superficially this seems an attractive proposition. We all know that certain benches are prone to take a more severe view than others—even, sometimes, to the point of acquiring a reputation for sternness. Those who have a really close acquaintance with the administration of the criminal law must also acknowledge that such reputations are often unjustly earned: a press campaign, based on reports which omit significant details such as defendant's records, can all too easily prejudice the uninformed. Then, again, some courts may have within their area a group of goods depôts or high-security factories at which dishonesty by employees is particularly dangerous in the public interest: it may well follow that sentences for larcenies at these courts show a greater use of imprisonment than those at courts where larceny generally means shoplifting. Statistics *based purely on categories of offence* will fail to reveal the different character of the work—even for supposedly "equal offences"—at neighbouring courts. It is our experience that magistrates are generally most conscientious in paying need to the special requirements of the district in which they work; but if a bench takes trouble to do what it can to protect goods in transit, or public property, from evilly disposed people, it is clearly unjust to label them "severe" just because they find themselves frequently in a position where something more than a discharge or a fine is called for.

Who is to say what are "equal offences"? We have already said enough, we hope, to show that the mere wording of the charge is quite inadequate as a guide: circumstances vary in every case: categories could only be established on a very rough-and-ready basis. Just think of the elaboration required to do the catalogueing with any thoroughness—and Dr. Mannheim is certainly a very thorough man, and must be presumed to be ready to face the implications of his proposals. It is the ever-shifting balance between the circumstances of the offender, the offence in its simplest details, and the circumstances in which the offence was committed, which makes any pre-determination of sentences well-nigh impossible. Then, again, think of the hundreds of criminal courts in England and Wales. Who is to ensure that the catalogue of "equal sentences" is kept up-to-date and in constant circulation? Under anything like the present set-up the job would fall to the Executive. . . . Is not the independence of the courts from the Executive the most precious of all our constitutional treasures? And if Dr. Mannheim agrees with this—as we feel sure he does—who would he suggest for this arduous (and thankless!) task? A committee, perhaps: it is a hallowed word! Such a body would presumably be a blend of "experts" and "laymen." Can it be seriously supposed for one moment that they would agree to *anything* concrete within the field of hypothetical sentences for hypothetical offences? Why, even within the very limited range of potential disagreement offered by a single juvenile delinquent on whom the fullest information is available—probation report, school report, care committee report, psychological report, remand home superintendent's report—it frequently happens that those called on for specific recommendations as to sentence—*e.g.,* psychiatrist and probation officer, suggest entirely different disposals.

Perhaps it is for these reasons that Dr. Mannheim proposes the recording of a court's reasons every time a prison sentence is imposed. Does he feel that such a requirement would cause courts to hesitate before passing a prison sentence? Why should this happen? Courts are already required to give reasons in certain instances—for instance when a person under 21 is sent to prison, or when an alternative sentence of

imprisonment for a fine is not accompanied by a period of time for payment. Up to now reasons have not been very detailed: "no other sentence practicable," for the young person; "gravity of offence" or "no fixed abode" for the refusal of time to pay. We suggest that these reasons are quite adequate to the requirements of the law as it stands, but the general gist of Dr. Mannheim's article suggests that he would like something more elaborate—a disquisition on each case. To make any sense, this would carry with it the corollary that a right of appeal would lie on the grounds (*a*) that the court's reasons were inadequate, or (b) that they were wrongly chosen in law. Does Dr. Mannheim envisage this? Surely he must, for there would be little point in requiring the detailing of reasons for prison sentences unless it were open to an aggrieved party to dissent from them and advance alternatives.

And this brings us to the right of appeal—the heart of our argument. These rights are now extensive: a convicted person can challenge his sentence if he pleaded guilty, and his conviction as well as the sentence if he disputed the charge. In addition he can challenge all separable parts of the proceedings—the admission of evidence, the constitution of the court, the summing-up, if his conviction was at the hands of a jury—and so on—on grounds of law; and upon appeal the sentence may be varied, the conviction quashed, or the decision of the lower court upheld. Here, surely, is the best machinery possible for ironing out such inconsistencies as manifestly declare themselves. Here, established by law, are courts—as independent from Executive or "Expert" interference as those courts which provide their work—and we suggest with every possible force that it is within the jurisdiction of established courts that the criminal law should continue to operate. Flexibility, adaptability, freedom from a mass of written instructions, these are the great features of our methods of administering justice. Whilst never blinding ourselves to the need for constructive improvements, let us beware lest any of the perils of a written constitution or an over-elaborate codification of the law come to stand between the defendant and his judges, both in the courts of trial and the Courts of Appeal. G.C.

SENTENCING: A REPLY

By HERMANN MANNHEIM, *Dr. jur., Hon. LL.D. (Utrecht); Hon. Director, Criminological Research Unit, London School of Economics and Political Science; formerly Reader in Criminology in the University of London.*

I am very much obliged to the Editor of this journal for his courtesy in letting me see advance proofs of the criticism of my recent article in *The Times*, and it gives me much pleasure to avail myself of his friendly invitation to make a reply to his other contributor's article. For many years, my writings have been given most generous treatment in the *Justice of the Peace* (*see, e.g.*, 110 J.P.N. 400 and 119 J.P.N. 714), and I should like to take this opportunity to say that the sympathetic reception of my work on the part of one of the most important and most widely read periodicals in the legal and penological field in this country has always been a source of great encouragement to me. For this, if for no other reason, I am very anxious to dispel certain misconceptions which my *Times* article seems to have caused. If only one half of the many nice things printed about my previous work in these columns should be true this might perhaps establish at least a presumption in my favour that what I have written in *The Times* may not be quite as unreasonable as might possibly appear at the first glance.

First of all, I would plead that not only offenders but criminologists as well can in fairness expect that their activities should be judged in the light of all relevant circumstances. What are these circumstances in my case? The Editor of *The Times* did me the honour of inviting me to write an article as some sort of "follow-up" to certain points made by the Home Secretary in his very remarkable address to the Howard League for Penal Reform on November 5, 1957. This I gladly agreed to do, but when drafting my article I found it impossible in the usual 1,400 words to do justice to the many important issues involved. As, no doubt for very good reasons, space for a second article could not be made available, I was faced with the choice of giving up altogether or, at the risk of some misunderstandings, concentrate on a few of the most crucial points and even here briefly hinting rather than fully explaining what I had in mind. I preferred the second course, knowing that I was addressing a public intelligent and well-informed enough to read between the lines. There was no need therefore, so at least I thought, to point out that, perhaps with a few rare exceptions, I was not suggesting pre-sentence inquiries in all those masses of minor traffic cases or those technical offences mentioned by my critic. (Having been working on English Criminal Statistics ever since I undertook a detailed examination of their contents and meaning for my *Social Aspects of Crime in England between the Wars*, 1940, there was perhaps no particular need to remind me that traffic offences form the bulk of all offences in this country.) There is in fact nothing in my article to suggest that I was so unreasonable as to ask for pre-sentence inquiries in each and every case coming before a criminal court. What I did was to refer approvingly to the recommendation in the Home Office Advisory Council's recent Report on "Alternatives to Short-Terms of Imprisonment" to make such inquiries obligatory in the case of all adult first offenders for whom imprisonment is contemplated. It might perhaps be argued that this might leave out those adult first offenders for whom the court does *not* contemplate a prison sentence, but who would have been sent to prison if the full story (not only their previous convictions) had been known. However, such cases may be less frequent, and the damage done by wrongly not sending a man to prison may be less serious than that done by wrongly imprisoning one who would have been all right outside. In short, as far as my alleged failure is concerned "to make any distinction between different classes of offence . . ." I have nothing to "concede"; I have rather taken the points made by my critic for granted. That the selection of cases not falling under the Advisory Council's recommendation may be very difficult is certainly true, and mistakes will be inevitable. In the recently published manual *Guides for Sentencing*, prepared for the "National Probation and Parole Association," New York, by a Committee of eminent American Judges, we read: "No court should ever undertake the disposition of an offender without being fully advised through an investigation"

and "A Judge should request a pre-sentence report whether or not he is considering granting probation. In fact, until he reads the probation officer's report, he hardly knows definitely whether he can consider a grant of probation." While agreeing with the second of these statements, I feel that the first is in need of certain qualifications, and the warning should also be added that the pre-sentence investigation should not be allowed to shift the burden of responsibility from the Judge or magistrate to the probation officer.

This brings me to a few other points where I feel I have been misunderstood by my critic. First, he seems to take it for granted that I am all out to secure nothing but more lenient treatment for the offender. In fact, in all my teaching and writing I have throughout been at great pains to stress that the object of modern penology is not simply greater leniency for its own sake, but more justice and efficiency in prevention and treatment, which may well require greater severity. The reason why so much weight is placed on pre-sentence inquiries is that without them we cannot know where to be severe and where to be lenient. The whole argument about the need for deterrence was therefore, with great respect, an example of preaching to the converted; I have never disputed this need, but deterrence must not be allowed to run wild. Rather significantly, my critic writes "the word 'deterrent' is absent from his article as it is from the writings of many who discuss court work from the outside." I am afraid a good many words had to be absent from this article of 1,400 words which was not intended to be a textbook of penal philosophy. And what is meant by "outside"? As far as the administration of English criminal justice is concerned I am of course only too conscious of being an outsider (not in Colin Wilson's sense, though) and I make no claim whatsoever *qua* outsider to have seen most of the game. As far as the administration of criminal justice in general is concerned, however, after many years of work as a criminal lawyer and as a Judge in a great variety of criminal courts, ranging from the lowest to the highest, I cannot well be called an outsider. Had it not been for my practical experience I would not have been bold enough to write on this immensely difficult subject of sentencing. The essential problems of administering criminal justice are much the same in most countries of the Western World, although some of the solutions, especially in the field of lay justice, are very different. Admittedly, my judicial experience was largely, though not exclusively, confined to the courts of one big city, Berlin. On the other hand, it included several years as a Judge in various Courts of Appeal, and I know that such courts, though most important and indeed indispensable, can never be regarded as the only solution to the problem of sentencing. Space forbids me to go into this very complicated issue.

My critic complains that I have used the word "treatment" instead of "punishment." This, again, he thinks is very significant and he asks "Does Dr. Mannheim subscribe to the view that crime is an aspect of disease?" I regret that my critic has apparently never attended any of my courses at the London School of Economics or elsewhere; otherwise he would have known that I have always been careful to explain to my students that disease, mental or physical, can be regarded as a "cause" of crime only in a fairly small percentage of cases. The reason why I referred to treatment instead of punishment was simply that probation and absolute discharge are not "punishment," and it would have been too tedious to have to say "punishment, probation and absolute discharge." This, too, I invariably used to explain to my students in the first of my lectures on penology, but in *The Times* article there was no space and, I thought, no need for it.

All this still leaves out one of the most crucial points of my article, also rather adversely commented upon by my critic: my insistence that there should be "equal" treatment of "equal" cases. To my critic this seems to be a new idea and he calls it "superficially an attractive proposition," but, he argues, statistics based purely on categories of offences are not good enough, and "who is to say what are 'equal' offences'?" And if an answer could be found who should ensure that "the catalogue of 'equal sentences' is kept up-to-date and in constant circulation?" These arguments, I confess, seem to betray a slightly superficial reading of my article. That it is not enough to provide figures showing differences in the use of prison, probation, etc., has I think been sufficiently stressed even in that short article. "Such differences," I wrote, "may be perfectly legitimate," but, I went on, sometimes they are not, and in any case the public and the offender have to be satisfied that there are good reasons for them. Nothing in my argument was original. That justice means, among other things, equality is one of the commonplaces of legal and moral philosophy. The real problem is how to define equality. In my article I tried to show some of the difficulties which have to be overcome by legislators, courts, and research workers in their efforts to find out which factors should be taken into account to enable us to decide which cases and which sentences are "equal." A good deal of research has been done on these questions in some countries over the past 40 years. The investigation into variations in the use of prison sentences by magistrates' courts, which I am at present directing at the London School of Economics for the Home Office and the Nuffield Foundation, has been briefly described in *The Magistrate* of January, 1957, and I am greatly indebted to the Magistrates' Association, the Justices' Clerks' Society, to many individual magistrates, justices' clerks, chief constables, probation officers, and others, for their interest in this research and for the invaluable help given to my field workers and myself. The field work has now been completed, but the material has still to be worked out, and no results can as yet be presented. Preliminary impressions, for what they are worth, seem to indicate that, while some of the differences in magisterial sentencing policy are fully justified, for others it will be difficult to find any rational explanations.

What will be the significance of such studies to the work of the courts? The idea is certainly not, as implied by my critic, to set up yet another "Committee" to tell the courts what to do in future, but simply to draw their attention to the observed differences, of which some of them have apparently been unaware, and to the presence or absence of rational explanations. The courts will, it is believed, be able and willing to draw their own conclusions from such findings.

The question of written reasons, also touched upon by my critic, presents one of the greatest practical obstacles in the matter. It is my belief that in a democracy courts, apart from very trifling cases, should explain and justify their sentences in writing, at least where deprivation of personal freedom is involved. This not only for the sake of the accused, but also in their own interest as it helps to clarify matters in our own minds when we have to put our reasons down in writing. It should, of course, if possible, be done before the sentence is formally passed and not merely as an attempt to justify afterwards what cannot be altered anyhow. I appreciate the difficulties which this would mean for lay benches, but the assistance of their clerk will be invaluable. There is the danger, rightly referred to by my critic, that

written reasons tend to become stereotyped and almost meaningless. Experiences with s. 17 of the Criminal Justice Act, 1948, have apparently not been too encouraging, and I have seen too many of these rubber-stamp affairs in my own practical work to be indifferent to this danger, but it might to some extent be overcome, I submit, by training courses, Home Office advice, guide books such as Mr. Claud Mullins's or of the kind referred to before, or by way of supervision by Courts of Appeal, and other devices. Research on sentencing might also help to replace the stereotyped pattern by realistic reasoning.

My critic does not deal with another very important point made by the Home Secretary and briefly taken up in my article: the need for more permanent higher criminal courts on the lines of the Liverpool and Manchester Crown Courts. It is one of the tragic paradoxes in the comparative history of legal institutions that continental countries, possessing a network of such permanent courts, do not have the division of the trial into two stages which is needed to derive the greatest benefit from pre-sentence inquiries, whereas English higher courts, because of their non-permanent structure, often find it difficult to use their two-stage trial to the best advantage.

One final word: My critic deals at some length with the need for courts to "strike a balance between the offence and the offender." In this he is perfectly right, but what else did I try to convey in my article? I wrote: "Justice requires more than the right relation between crime and punishment, adjusted to the needs of the individual offender. It also requires equality of treatment . . ." And later on: "Finding the right relation itself has four aspects. First, there have to be communal values, so that the lawgiver can establish as a generally accepted principle whether, for example, cruelty to children should (other things being equal) be more severely punishable than cruelty to animals" [this was a reference to what I called the "puppy case"]. I am sorry to have to give these lengthy quotations from my article, but from the arguments used by my critic readers of this journal may get entirely wrong impressions of what I had actually written on this point. The establishment of generally accepted values regarding the comparative gravity of various offences is of course the first step in the process of what my critic calls "striking a balance between the offence and the offender." The subsequent steps are also briefly mentioned in my article, but I must not strain the patience of my readers too much by giving further quotations.

POLICE COSTS

The first report of the 1957–58 Session from the Select Committee on Estimates was published recently together with the evidence the Committee had heard in its examination of the Police Estimates. This examination, which was conducted in the usual detailed style of Select Committees on Estimates, took place over a period of several months, and a number of recommendations of major importance to future police administration, plus others of moment on matters of detail, have emerged.

Undoubtedly one of the most important proposals is that relating to establishments. The Committee heard much evidence from representatives of departments and associations, and from individuals on this matter. For instance, questions and answers to the Home Office representative went like this: "Am I right in saying that even as far as London is concerned—and it is equally true of the provinces—there is no requirement for a periodic review of the establishment of the police force? (A) No, there is certainly no statutory requirement.

. . . The Home Secretary has got to be satisfied that the police area is efficiently policed? (A) Well, yes. That is part of the purpose of the inspection, of course. . . . I suppose there is a concurrent duty on H.M. Inspector, if he thinks that too many police are being employed in a particular area, to say so.

. . . What I am asking is who . . . is looking at it all the time? (A) We have got, of course, 125 police forces who are very jealous indeed of their independence and the Secretary of State and the Home Office are extremely diffident about interfering with an individual police authority on a matter of this sort . . ."

In their evidence the County Councils Association drew attention to unexplained variations in establishments between similar authorities, quoting six counties and six seaside towns. We have made similar comments previously (*e.g.*, 121 J.P.N. 103).

The Committee hold the view that present disparities between the authorized establishments of the various forces in relation to population cannot wholly be accounted for by the requirements of local conditions. They say, for example, that the disparity between the establishment provided in Manchester of one policeman for every 457 inhabitants and that in Sunderland of one policeman for every 734 inhabitants is transparently too great. They recommend that machinery be devised to provide a more regular and uniform system for reviewing establishments and consider that a quinquennial revision by H.M. inspectors might form the basis of such a system. To co-ordinate this revision and the work of the inspectors generally it is recommended that a Chief Inspector of Constabulary be appointed.

At a later stage the views of the Home Office and the police authorities on the Committee's proposals will be read with considerable interest.

A related point is made by the Committee in regard to civilian staffs engaged for office, workshop, canteen and storeroom duties. The number of such staff increased from 3,187 in 1946 to 6,525 in 1955, the immediate impetus being the shortage of uniformed police since the end of the war. The Committee observe that whilst the use of civil staff has increased police expenditure in recent years, when establishments can again be filled their use will prove to have been an economy. They thought, however, that there was a tendency to regard the employment of civil staffs not as a means of reducing uniformed establishments but as an addition to police resources and recommended that where additional civil staffs are employed appropriate reductions be made in the uniform establishment.

In connexion with the suggested review of police establishments the Committee recommend that the size and number of training centres be reviewed. There are eight of these at present, administered by the Home Office as a common service: the cost is recouped as part of the charge per police officer on authorized establishment and for 1958–59 this unit charge is estimated to amount to £11 5*s*. The Committee say that the cost of training is heavy, appearing to be about £300 for the first four months, plus the cost of further attachment and instruction before the recruit can take a full part in the

work of his force. In evidence the Police Federation estimated that £700,000 is annually expended on the training of those recruits who subsequently retire before completing their normal period of service. The Association of Municipal Corporations thought that savings might accrue if the system were changed and the police authorities in each district left to administer the centres, sharing costs between them as agreed. During 1954–55 a special sub-committee of the Central Committee on Common Police Services made a detailed examination of the siting and use of training centres. This sub-committee did not explore the point raised by the A.M.C. but they did come to the conclusion that no reduction in the number was justified, thinking that the present arrangement whereby there is one training centre for each police district is best.

A recommendation of the Select Committee which is unlikely to be popular with the Police Federation and indeed with higher ranks, including a number of chief constables, is the proposal to grant an additional lump sum gratuity on retirement to such men as voluntarily stay in the force beyond the time of qualifying for two-thirds pension. Neither is their proposal that local police authorities be advised not to adopt the practice of retiring superintendents or other officers for the purpose of improving the rate of promotion in their forces. It is true that the Committee only refer to "fit and able" officers but many chief constables hold strongly that a man who has done 25 or 30 years on the beat and similar duties should not be retained longer in the force on general grounds of efficiency. The Federation agree with this view and in addition, of course, frown on any proposals which would block promotions.

In relation to the computation of police pay the Committee recommend that the compensatory grant recouping income tax paid on rent allowances be abolished, being included in an increased taxable rent allowance. It will be recalled that until 1950 there was a similar grant to firemen: in that year, however, firemen received an increase of pay in which the compensatory grant was merged. We referred to the compensatory grant at 121 J.P.N. 727, and suggested that it was a matter which could be looked at when police pay was under review. There is no doubt that the present system is the cause of a great deal of office work and much in need of simplification.

Two other matters of financial administration are mentioned: they are important enough to warrant the serious consideration of all police authorities. The first refers to the necessity of co-operation between police departments and finance departments, especially where local authorities have installed electronic or mechanical aids. The Committee rightly make the point that savings in terms of money and police manpower can be effected where local authority treasurers undertake duties in relation to the police payroll, payment of wages, stamping of insurance cards, income tax P.A.Y.E. records, pensions and bills. Whatever may be thought about the effect on manpower of the increasing use of mechanical and scientific devices for real police work there can be no argument that the Committee is right regarding the administrative and clerical work of the sort detailed above.

The second point concerns the charges made for the use of police in connexion with certain activities of private persons or organizations. It is recommended that scales of charges should be reviewed so as to ensure full recoupment of all costs (including overtime pay) incurred by police authorities. Charges for services are not always reviewed frequently enough, and this not only in police departments. It is a common failing in many branches of local (and central) government.

The Committee came to the conclusion that the provisions of the Police Act, 1946, concerning voluntary or compulsory amalgamations of forces have not been sufficiently used. In evidence Mr. F. J. Armstrong, M.B.E., one of H.M. Inspectors of Constabulary, said that his conception of a good force would be in the region of 500 to 600 men and no more, being one that a chief constable could manage comfortably and where he could maintain the closest possible liaison with his men. If this were to be the criterion there would indeed be drastic and far-reaching amalgamations but we imagine that it will be a very long time before sweeping changes of this kind are made. For instance, before a number of police amalgamations could be regarded as practical possibilities vast changes in many local authority boundaries and powers would be necessary.

A CHILD'S GUIDE TO LOCAL GOVERNMENT—III

My Dear Son,

My previous letters had brought events to the eve of the poll. On the great day itself, you will find yourself with much or with little to do. If the organization is good, the agent efficient and the helpers numerous, then your active presence will not be enthusiastically welcomed. You may even begin, for the first time in your political career, to feel like an over-dressed dummy in the window of a departmental store. You will probably be placed, by an exasperated agent, at the gateway of a large polling station where you will be pinned to the post by a large rosette in the party colours blossoming on your lapel. There you must stand and smile and smile and smile at the occasional approaching pedestrian who, as like as not, will gaze with mild surprise at the groups of depressed men and women, all striving to be cheerful and gay, and may assume, with some justification, as he adopts a waiting position against the iron railings or the stone wall, that a happy wedded pair are soon to emerge from the gaunt building behind.

Pinned against the other post of the gateway may be standing your principal rival, with the others (if there are such) dotted about. To explain what attitude you should adopt to your rivals and their supporters in this situation I must first digress. It has already been explained that the only really serious work at election time is the devising and implementing of ways and means of translating your supporters from hearth and home to the polling booth, where they will find paper and pencil provided and where their task becomes the relatively simple one of marking a cross against your name in the appropriate square. As polling day wears on, your task of driving your supporters from their holes in the ground into the open spaces will obviously be assisted if you know which of them have been to the poll and which have not. For this purpose, one of two devices is possible. The first and more elaborate is to issue cards, before polling day, to those whom you have hopefully listed as supporters and to collect these cards from them as they emerge from the polling station. The second device is to ask the name of each such emergent, to note it and to check it against the list of supporters.

It will now be clear that being pleasant and cooperative to your rivals on polling day and taking a cosmic line of "let-THE-PEOPLE-decide-we-have-both-done-all-we-can," or being unpleasant and remote and sticking to the principle of "they-are-the-enemy-I-won't-soil-my-hands," is a matter of tactics and not reducible to any universal rules. If both sides are adopting either of the devices just mentioned, the work of each is halved if they work together and exchange information. But if one side is not following either method, cooperation and the pleasant smile are valueless to that side and wasted on it. Perhaps, in the efficient great cities, the use of these devices is successfully practised. Perhaps, there, cards or names are

quickly returned to headquarters where eager, swift hands check, cross-check and counter-check, information is extracted, charts are amended and cars and motor-cycles streak out to pick up those whom this comprehensive record system shows to be reluctant, resting, or recalcitrant.

All this may be. But in the smaller towns and in the countryside, the result seems always to be the same. Few votes are cast before five o'clock and the great rush (in a comparative way) is between 5.30 *p.m.* and 7.30 *p.m.* During this period, headquarters is swamped by cards or names. They are piled high on the one small desk, they are trampled underfoot, they fall behind the cupboard. They are rescued, stacked, arranged, and checked against the supporters' list. Finally all is settled; the information is collated; the names of those who, it seems, have not yet voted are clearly indicated. All that now remains is for the fast young men in the fast cars or on the fast bicycles to seek out these fallers-by-the-way and to urge them to perform their public duty. It is generally at this point that someone mentions that the polling station will close in precisely three minutes and forty seconds.

Comes the count. In you all go, you and a favoured few posing as counting agents. Here come the boxes. As the tension increases, the candidates and others begin to prowl among the counting clerks, watching their progress. Slowly the pattern emerges. The "sitting" candidates who are clearly and safely about to be re-elected adopt one of three attitudes. Some are frankly self-satisfied and pleased. Their moment of anguish is over. Once again they are assured of the importance of their existence; once again, that terrifying nagging doubt whether they are really so popular and so well thought of as they seem to be is quietened. It is all right after all. Some are equally self-satisfied and pleased but less frank even to themselves. They have always recognized the possibility of defeat and they have, ready to slip into place, a simple contempt for the ordinary voter who is quite unable to distinguish merit from bombast. This card need not be played today. It can go back to the pack for another occasion. This election has once more shown that the man in the street frequently sees, approves and follows the better course, the sounder man. Lastly, some do not know what to think. They discover at the same time that they are more gratified than they had thought they would be; that they care far more than they had imagined they would; and, on the other hand, that they had been looking forward to a release from the interminable meetings, the waste of time and petty squabbling of town or country politics. They still wish they had been defeated but are glad they were not.

After the result is announced, short speeches may be made to any of the public who happen to be waiting. This is straightforward. If you have won, you thank those who have voted for you, promise to justify their trust, and commiserate with your unsuccessful opponents. If you have lost, you thank those who have voted for you and, if you were previously a member and were seeking re-election, you say that you had hoped to carry on a little longer and serve the town for a further period but that now that is not to be and you hand on the torch (or the flag) to your opponent desiring him to keep it alight (or guard it)—with the inference that you will be extremely surprised if he does not douse it (or tear it to shreds). In a word, the victor can barely fail if he sticks to magnanimity, while the loser tries as delicately as possible to indicate that a blunder has been made and almost (but not entirely) conceals his pained surprise.

Let us assume, so that we can proceed, that you have been elected —although only 40 out of every 100 voted at all and 25 of these 40 voted against you so that you succeeded on a 15 *per cent.* vote. Never mind, you are launched on the great "democratic" sea, borne up on the people's acclamation, swept onwards by your colleagues and The Party, protected by them from the early storms (which you will soon learn to ride), and, as it seems, with nothing between you and the triumphant landing on that nearing shore of success—except, of course, gross calumnies, deliberate and malicious misrepresentation, and the growing opposition of self-seeking rivals.

In my next letter, I shall advise you as best I can how to be a councillor.

Your affectionate father,

J.A.G.G.

MISCELLANEOUS INFORMATION

WEIGHTS AND MEASURES: MARKING OF PRE-PACKED GOODS

Surrey county council are asking the County Councils Association to consider making representations to the Board of Trade for provision to be made in future legislation requiring (*a*) pre-packed foods and other household commodities, such as soap and soap powder, to be sold in simple fractions of a pound, *e.g.*, two *ozs.*, four *ozs.*, eight *ozs.*, or in quantities of a pound or an integral number of pounds, or alternatively, packages or containers to be marked with a statement of the price per pound at which the particular article is sold or offered for sale; (*b*) all pre-packed foods to be stamped with the date on which they are packed.

The county council's public control and licensing committee, in a report to the council, say that "in order to reduce labour costs there is an increasing tendency on the part of manufacturers and packers to market pre-packed goods in quantities expressed in mixed numbers consisting of ounces and fractions of an ounce, and this method of marketing renders it difficult for a purchaser to make a comparison with other goods of the price per pound of the article. Since a wide range of foodstuffs are required to be marked with an indication of their net weight, but are not required to be pre-packed in prescribed quantities, it would seem desirable that this situation should not be allowed to develop further under legislation which only protects purchasers in transactions covering a few scheduled articles." In view of this tendency the committee consider it desirable that these pre-packed goods are so marked that the customer can easily ascertain the price per unit of weight or measure of the goods.

SHERIFF'S BADGE OF OFFICE

The office of Sheriff of the county of Middlesex can be traced back through the years to the 11th century when William the Conqueror had negotiations with Esgar, Sheriff of London and Middlesex, but there has been no badge which the Sheriff can wear on official occasions.

Her Majesty's Lieutenant of the county invited all his deputies and the justices and members of the Middlesex county council to join him in subscribing to the presentation of a badge of office to be worn by successive Sheriffs in the county of Middlesex.

The presentation took place on Monday, January 27, in the council chamber at the Guildhall, the recipient being the present Sheriff, Mr. C. Bennett Baggs, J.P., who accepted it for his use and custody during his term of office.

THE SURVEY OF SICKNESS, 1943 TO 1952

The General Register Office has published "The Survey of Sickness, 1943 to 1952" (No. 12 in the series *Studies on Medical and Population Subjects*).

This study by Dr. Logan and Miss Brooke of the General Register Office, gives an account of the origin and scope of the Survey of Sickness, describes its methods and makes a considered appraisal of its contribution, actual and potential, to morbidity statistics in this country. It also gives some account of social surveys in general and of sickness surveys of various kinds in other countries. A series of statistical tables and diagrams is included, summing up the principal information derived from the survey.

AMALGAMATION OF HAMMERSMITH AND WESTMINSTER RENT TRIBUNALS

With effect from February 1, 1958, the existing Rent Tribunal at Westminster was closed and amalgamated with the Hammersmith Tribunal.

The office of the new tribunal will be at Rooms 408–410 South Block, Hythe House, Brook Green Road, W.6; telephone number RIVerside 4181, extensions 28 and 39.

KINGSTON UPON HULL CHILDREN'S REPORT

The stories of achievement and the general atmosphere of purposeful activity which are to be found in this report reflect immense credit on the committee and upon the various good people in charge of the several homes and schools for which they are responsible.

We are told that a high proportion of children now in care are in need of long-term provision because of emotional disturbance, maladjustment, or mental backwardness. The problems of placing such children are very great, and it is a continual source of anxiety that some homes intended for short term cases—whose needs are, of course, certainly different—have to be used for these long-term cases. "The work of these homes cannot continue as it should in giving family training when the whole programme is at times upset by the anti-social behaviour of one or two unfortunate children. We have approached many organizations but are still unable to secure the appropriate residential treatment that we require for certain children."

The problem is certainly not confined to Kingston upon Hull. The waiting lists for maladjusted children in need of prolonged

treatment are everywhere overlong. It is good to learn from this report that boarding out with the right type of foster-parent is considered the best method for those heart-rending cases. It is high time that foster-parenthood came to have a loftier place in the hierarchy of social services. The general public not only knows all too little about what is done by many good people for scant reward, but is also ignorant of the urgent need for a great expansion of the service.

Institutionalism is the besetting peril of all child-care services. It is not the least commendable point about this report that the Kingston upon Hull committee are so clearly alive to the dangers.

Some heartening news is given of the older children. Residential employment becomes the substitute for family life in the foster home, and it is good to know that the children wish in many cases to keep in touch with the foster-parents to whom they owe so much.

The larger implications of all this deserve fuller study by one of the research units so indefatigable in our day and generation. What is the ultimate effect upon the nation's family life of all these substitute homes, providing as they so often do, warmer personal ties than those of physical kinship? It is an odd commentary on the social values of the twentieth century that some of its greatest successes in terms of reintegrated lives have been won by disregarding the blood tie, and replacing it with one which looks for its sanction to the parable of the Good Samaritan. "He that showed mercy" is indeed the good neighbour. There is need for many more.

YEOVIL FINANCES, 1956–57

The rural district council of Yeovil are responsible for the administration of local government services in an area of 54,000 acres containing 24,000 people. A rate of 16*s.* 4*d.* was levied in 1956–57 of which 13*s.* 10*d.* was for Somerset county and 2*s.* 6*d.* for R.D.C. provided services. In his excellent preface to the accounts the chief financial officer, Mr. R. J. Parsons, F.I.M.T.A., F.C.C.S., states that although since revaluation the district has to bear a larger proportionate share of county expenditure, nevertheless rates levied per head of population in Yeovil are still well below the national average, as these figures show:

	1956–57	1957–58
Rates levied per head of the population	£ *s.* *d.*	£ *s.* *d.*
Average for 90–100 rural districts	7 13 4	8 3 0
Yeovil	6 8 3	6 5 11

The general state of the district's finances is another matter on which the members and their financial officer may congratulate themselves. At the year end the credit balance on general rate fund amounted to £40,000, and in addition there was a balance of over £4,000 in the vehicles renewals fund: by comparison a penny rate produced £795.

The council decided, notwithstanding the increase of rateable values after revaluation, to continue to restrict compounding allowances to properties with rateable values not exceeding £8, and the amount of the allowance was reduced from 15 *per cent.* to 10 *per cent.* As a result the cost of compounding allowances fell from £3,650 to £850. Mr. Parsons states that allowances granted to charitable and other organizations under s. 8 of the Rating and Valuation Act, 1955, amounted to £800, only £60 of which was given under subs. (4). The council have now given formal notice to discontinue these allowances after March 31, 1961.

The council have spent a great deal of time and effort on the housing problem and have made good progress. At March 31 last, the authority owned 1,700 dwellings of which 750 had been erected in the post-war period. The treasurer mentions that all rents were increased from November, 1956, and that a differential rent scheme is operated. A post-war three-bedroomed house now lets at 21*s.* per week for 50 weeks of the year, certain tenants being required to pay additional charges of up to 5s. a week under the differential rents scheme. Mr. Parsons feels that the rents are still very reasonable especially when compared with an economic rent of £2 5*s.* 4*d.* a week required to finance a house costing £1,650 to build. Although normal rate fund subsidies were made in 1956–57 the council have decided to discontinue payments thereafter.

The council has built a new impounding reservoir which was working throughout the year. Deficit on the water undertaking fell by £9,000 as compared with 1955–56: Mr. Parsons writes that nevertheless it will be necessary to review all water rates charges.

COMMITTEE TO INVESTIGATE RATING OF CHARITIES

The constitution and terms of reference of a committee which will investigate the liability for rates of charities and similar organizations has been announced in the House of Commons by Mr. Henry Brooke, Minister of Housing and Local Government. The Committee has the following terms of reference: "To review the present treatment for rating of hereditaments in England and Wales occupied for purposes of a charitable nature or for other similar purposes (other than hereditaments to which s. 7 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955 applies); to consider in particular the provisions of s. 8 of the Act of 1955 and of the Scientific Societies Act, 1843: and to advise on the proper treatment for rating of the hereditaments within these terms of reference."

Letters to the Committee should be addressed to its Secretary, Mr. A. G. Rayner, at the Ministry of Housing and Local Government, Whitehall, London, S.W.1.

NATIONAL COUNCIL OF SOCIAL SERVICE

The annual meeting and conference of the National Council of Social Service was held in London recently. At the business meeting the chair was taken by one of the vice-presidents, Dr. W. C. S. Adams, C.H., who spoke of his association with the work of the council for nearly 40 years. He commented on the changed relationship which now existed between voluntary bodies with each other and referred to the co-operation which voluntary organizations increasingly receive from the statutory authorities—central and local. This had built up a type of community life which was unique in the world. Lord Heyworth, LL.D., was elected president in succession to Sir Edward Peacock who had resigned after working with the council for nearly 25 years.

In presenting the annual report the chairman of the Council (Sir John Wolfenden, C.B.E.) referred to the varied activities of the committees and group associated with the Council such as the study by the Women's Group of Public Welfare on the problem of loneliness. He said this study was undertaken because it was felt that in spite of the increased provision for social welfare, loneliness in the community was increasing and had become a major social problem affecting all kinds of people of all ages.

Another matter to which he referred was the establishment, through the initiative of the National Federation of Community Associations, of a representative committee, known as the National Advisory Committee on Television Group Viewing, the purpose of which is to provide a central focus for discussion on the role which television might play in organized community life. On services for the disabled he referred to an inquiry which had been promoted jointly with the Central Council for the Care of Cripples on the future development of voluntary services for disabled people.

Reference was made in previous annual reports to the central action which the Council took in connexion with the operation of the recent Rating Acts in relation to voluntary organizations. The chairman said a survey had been sent to the Minister of Housing and Local Government summarizing the position of voluntary societies at the end of the first year of the new rating system. The majority of them had been sympathetically treated by local rating authorities and had been granted the financial benefits provided by s. 8 of the Rating and Valuation Act of 1955.

The latter part of the meeting took the form of a conference on "Social Developments: New Towns and New Housing Schemes," on which an address was given by Mr. W. O. Hart, C.M.G., clerk of the London county council. Mr. Hart said we are living in a period of urban migration. Between the two wars 1¼ million people moved into the country from the greater London area. The eight new towns had taken 130,000 out of the 300,000 ultimately to be taken from London. 145,000 people had been housed on London county council out-county estates since the war. Referring to the operation of the Town Development Act he distinguished new towns from satellite housing estates. He said local authorities developing such estates must consider why they have done so. Development corporations have set themselves the task to build complete units and must attract employment. Most of the tenants in the new towns are skilled or semi-skilled workers. They are generally young with growing children. The satellite housing estates are, however, places for people to live in. Originally no provision was made there for new employment. Now the position is slightly different but they are still mainly housing projects. On these estates many people have to travel daily to work but more people are now finding work in the locality. Mr. Hart showed that in the new towns there was need for a social development officer as well as a housing manager as has already been agreed in some of them. Another problem was that there had been insufficient leaders of the right type. This was also the position in satellite housing estates. He asked whether enough was being done to seek out and train youth leaders for this purpose. In his view this was a matter for co-operation between the statutory authorities and voluntary bodies.

Mr. Hart was followed by a general discussion which was introduced by Mr. F. J. McCulloch, chief research officer, Planning Department, Lancashire county council; Dr. Michael Young, director, Institute of Community Studies, and Mrs. Muriel Smith, officer for community neighbourhood work, London Council for Social Service.

VITAL STATISTICS, 1957

The population of England and Wales continues to increase, according to the latest estimates contained in the Registrar-General's Quarterly Return relating to England and Wales for the September quarter, 1957.

The home population of England and Wales at June 30, 1957, is estimated at 44,907,000 (21,648,000 males and 23,259,000 females), an increase of 240,000 since June 30, 1956, and of about 1,100,000 since the census of 1951. (The home population is the population of all types actually in England and Wales.) The population aged 65 and over is estimated to have increased by 93,000 since mid-1956 and by some 440,000 since the 1951 census. It is estimated that there are now 2,070,000 men and 3,196,000 women aged 65 and over, that is, a ratio of more than three women to two men. At age 75 and over there are more than one and a half times as many women as men, and at age 80 and over nearly twice as many.

The total population (the civilian population *plus* H.M. Forces belonging to England and Wales at home and abroad but *exclusive* of other armed forces stationed here) is estimated at 45,043,000 at June 30, 1957.

On the basis of the 1956 mortality experience, the expectation of life of a boy at birth is 67·76 years, and of a girl 73·30 years. On the same basis, of 10,000 boys born, 6,812 would be expected to survive to age 65 and of 10,000 girls, 8,037.

A table included in the return gives the numbers of deaths from tuberculosis, the new cases notified and the death rates in England and Wales and various other countries in Europe per 100,000 population in the years 1950 to 1955. The table shows that the death rate from tuberculosis has fallen by more than 50 *per cent.* since 1950 in all the countries for which 1955 figures are shown except Austria and Switzerland. Only Denmark and the Netherlands had lower rates than England and Wales in 1955.

LOANS SANCTIONED—NINE MONTHS TO 31st DECEMBER, 1957

In the year 1956–57 the Ministry of Housing and Local Government sanctioned loans to local authorities in England and Wales to a total of £457 million. In three-quarters of the current financial year the total has reached £354 million but the figures for the December quarter of 1957 show a marked fall under certain heads as compared with the two previous quarters.

Purpose	*Quarter ended*		
	30*th June*, 1957	30*th September*, 1957	31*st December*, 1957
	£ million	£ million	£ million
Housing (Land, dwellings roads, sewers, etc.) ..	62	60	49
Advances and Grants under Housing and S.D.A. Acts	16	16	17
	78	76	66
Sewerage, sewage disposal and water supplies ..	12	12	14
Education	23	27	17
Miscellaneous	10	9	10
	123	124	107

These heads are housing and education in that order, local capital works being one of the few things in which the education service is not the largest spender. Housing is definitely showing a declining trend and it will be interesting to see if the fourth quarter's figures continue to signal diminished activity. It will be recalled that the Secretary of the National Housing and Town Planning Council prophesied a fall of the annual rate of house building of all kinds to 100,000 by next summer, due to high interest rates and other factors. It is certainly true that many authorities have revised and reduced their housing programmes and also that in some areas, particularly where builders are not fuily employed latest tender prices have shown a marked fall.

We note that so far there has been no drop in the money required to make loans for house purchase and grants under the Housing and Small Dwellings Acquisition Acts.

Loans sanctioned for education purposes totalled £92 million in 1956–57. In the three quarters to December 31 the total is £67 million so that if eventually the total for 1957–58 does not reach the previous year's figure the difference is not likely to be large.

A little more is likely to be spent on sewerage and water supplies in 1957–58 and about the same on miscellaneous services.

While housing may thus show an appreciable reduction it is not probable that there will be much change on the other services. In making these comparisons, however, it must not be forgotten that the total for 1956–57 itself showed a reduction of £58 million by comparison with the total of loan sanctions issued during 1955–56.

CHIEF INSPECTOR OF FACTORIES REPORT FOR 1956

A rapid growth in the industrial use of radio-active materials is referred to in the annual report of the Chief Inspector of Factories for 1956.

"It has been increasingly felt," states the report, "that the use of radio-active materials (other than for luminising, which is the subject of existing regulations) should be brought under more detailed control. An expert committee, on which a number of organizations were represented, was formed to examine a draft Code of Regulations which had been in course of preparation, and as a result draft regulations in respect of sealed sources were nearly complete by the end of the year and have since been published."

The regulations will cover X-and gamma radiography, X-ray fluoroscopy and crystallography, radio-active static-eliminators and thickness gauges, X-ray thickness gauges, and X-ray and radio-active sources used for irradiation of chemicals, foods, etc.

—in fact all known industrial uses in current practice or projected in the future.

During 1956 the number of notified accidents totalled 184,098 non-fatal and 687 fatal, the corresponding figures for 1955 being 187,700 and 703, respectively. The non-fatal accidents show a reduction for the first time since 1952. The accident rate which is again expressed in index form was 87·1, and was the lowest yet recorded. "The satisfactory feature is," says the chief inspector, "that the downward trend substantially continues."

Efforts to reduce the risk of accidents due to fire were greatly intensified, and the chief inspector remarks that the aim was not only to ensure that existing requirements of the Factories Act and Regulations are complied with wherever they apply, and to review the standards of compliance, but to increase the use of precautionary measures which have not, up to the present, formed the subject of any measure of compulsion. These efforts are part of a continuing campaign carried on not only by the inspectorate, but by other Ministeries, local authorities, fire services and other organizations.

The chief inspector says that benefits to health are beginning to accrue from legislation of more general scope than the Factories Acts. The Clean Air Act, where it has reduced the pollution of the atmosphere, has had immediate repercussions on standards of cleanliness and lighting. The Food Hygiene Regulations, 1955, also have stimulated food products factories and factory canteens to further efforts in cleanliness.

WAR DAMAGE PAYMENTS
The Commission's Work in 1957

The War Damage Commission paid out £23¼ million during 1957 compared with £25 million in 1956 and £27¼ million in 1955. The average weekly rate of payments in the last quarter of 1957 was £417,500.

The Commission paid 10,346 "cost of works" claims for repairs during the year, and made 4,381 payments on account or as instalments. The amount involved was £20 million of which about £2¼ million was for the repair and rebuilding of houses. Other principal items were: commercial buildings, £5 million; factories, £3¼ million; churches, £4¼ million; shops, £2 million.

The average amount of each claim paid during 1957 was £1,930 compared with £1,520 in 1956 and £1,070 in 1955.

Value payments amounted to £3¼ million, of which £522,000 related to houses.

Greater London's share of the total was £14¼ million.

Total war damage payments by the Commission now amount to £1,222¼ million in 4,713,000 separate payments. Contributions by property owners during and after the war amounted to nearly £200 million.

WILTSHIRE WEIGHTS AND MEASURES DEPARTMENT

Although, in his annual report, Mr. C. J. E. Sears, chief inspector to Wiltshire county council, refers to the failure to implement the recommendations of the Hodgson Committee, he is evidently of opinion that the present law is not working badly.

The high standard of the control on trade which, he says, is exercised at the present time by weights and measures departments reflects creditably on the elasticity and wisdom of these old laws and the keenness, ingenuity and training of the men appointed to enforce them. Pending any new legislation some of the gaps in the old are blocked by the frequent and varied use of those very comprehensive provisions of the Merchandise Marks Acts which deal with trade descriptions, and instances of this practice appear in certain sections of this report.

Of 23,844 weights tested 873 were incorrect. Of 58,709 measures tested 483 were incorrect. Of 1,263 weighing instruments tested 213 were incorrect, and of 7,331 weighing instruments tested 611 were incorrect. The majority of discrepancies were due to ordinary wear and tear. On request, inspectors also test and report upon non-trade equipment in use at establishments of the three Services, and under arrangements which have been in being for some years they perform a similar service for other departments of the county council.

The report states that of 1,802 sacks of coal checked, 62 were incorrect, of 113 loads of coal, 25 were incorrect. Of 158 loaded vehicles, 20 were incorrect. There is also occasional ground for complaint about supplying the wrong grade of coal and thus overcharging. Mr. Sears would like to see coal supplied in a light non-returnable container marked with the net weight of the fuel, its grade and source. The Merchandise Marks Act, with its maximum penalty for a first offence of £100, is used for the purpose of prosecuting in respect of fuels other than coal, because the Weights and Measures Acts do not apply to them. The maximum penalty under the Weights and Measures Acts is £5.

Underweight deliveries of coal are just as serious as those of other solid fuels and therefore in order to deal with like offences in a similar manner, the Merchandise Marks Acts have been invoked where possible in all proceedings relating to short deliveries of fuel. From cases quoted in the report it is clear that carelessness and fraud have been practised by some of the delivery men and that constant vigilance by the inspectors remains necessary.

In connexion with pre-packed foods, it is pointed out that the solid content of such articles as tinned fruit and vegetables is a matter which creates considerable dissatisfaction. The weight or volume declared may legally include the liquid content, and as this can be varied it is impossible for purchasers to make a correct assessment of the goods at the time of purchase.

The results of inspections made at retail and wholesale premises and delivery vans in the streets were as follows:

				Other Articles	
	Bread	*Milk*	*Butcher's Meat*	*Pre-packed*	*Not pre-packed*
Examined ...	15,567	4,173	1,054	26,617	2,756
Deficient	1,369	47	49	466	90
Incorrect in other respects	—	—	5	191	111

Wiltshire seems to have a good record for sausages. This report states that none of the 44 samples taken since March 1, 1953, had a meat content below standards prescribed under war legislation. The average figures were beef 66 *per cent*, pork 71 *per cent*. Milk has not been so satisfactory during the year under review as in the previous year, 13 charges were necessarily preferred against five farmers who had in their possession for sale to the Milk Marketing Board, churns of milk containing added water in amounts ranging from two to 15 *per cent*. respectively. Two of these farmers were also charged with selling milk deficient in fat and four others were cautioned in respect of small amounts of added water or deficiences in milk fat. There were also some instances of misdescription. A number of discrepancies in connexion with fertilizers and feeding stuffs were also detected and dealt with.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

EVIDENCE OF DRINK ON DANGEROUS DRIVING CHARGE

I have read, with very great interest, the letter and your reply on p. 13, *ante*, on the subject of adducing evidence that the driver had been drinking, on a charge of dangerous or careless driving alone. In Scotland, it has been held that on such charges evidence that the defendant had taken drink is admissible even though there is no charge of driving under the influence of drink (*Burrell* v. *Hunter* (1956) S.L.T. (Sh.) 75, following another Sheriff's decision and an unreported decision of the High Court of Justiciary). In England, the Lord Chancellor has said that cases might occur in which evidence of having taken drink would be very prejudicial and would have evidential value. Judges and benches, he said, must consider the circumstances of the case and be guided by the rule that they will admit such evidence if they think it relevant and exclude it if they think it to be merely prejudicial (House of Lords Debates, March 14, 1955).

In my opinion, evidence that the defendant had been drinking would invariably be likely to cause prejudice against him in the minds of many magistrates and jurors. I agree with Mr. Brain, however, that such evidence would be relevant and should be admitted where "clearly a driver's subsequent behaviour and driving was undoubtedly caused by the drink which he had consumed." A difficulty to my mind would be showing this "clearly." It is the actions of the defendant with the motor vehicle that show whether or not he has been driving dangerously and in the majority of cases there is never any question of whether or not he has had drink. People do many things recklessly when they are entirely sober and I suggest that even teetotallers are guilty from time to time of dangerous or careless driving. As it is the actions of the driver that are the relevant issue, the prosecution has to prove such things as excessive speed and going on the wrong side of the road, etc. Why is it necessary to add any more about the defendant having had some drink? Such evidence, surely, as pointed out above, can then have nothing but a prejudicial effect. To put it another way, if the prosecutor proved merely that the defendant had taken drink but that his driving was in fact perfectly proper, then the case would fail. It seems to me that the evidence of drink does nothing to the prosecutor's case and is not more relevant than evidence would be that the driver was in pain or in a bad temper or worried; I remember one case where a driver claimed that he had been speeding because of forgetfulness caused by "spiritual intoxication from listening to Tchaikovsky's music." I do not suppose that many prosecutors seek to prove such matters and I can see them getting short shrift, if they do, from some Judges, e.g., the late Swift, J. However, Mr. Editor, it seems that there are important authorities against us in our opinion that evidence of having taken drink should be excluded. The only one I can find in our favour is *R.* v. *Carr* [1932] 24 Cr. App. R. 199, where it was held that a charge of motor manslaughter should not be tried along with one of driving under the influence of drink. How far this case is still followed, I do not know.

Yours truly,
CAMBRIAN.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FURTHER OFFENCE BY PROBATIONER

With the greatest respect to Mr. J. S. Allen, whose article, "The Further Offence Whilst on Probation," appeared in your issue of January 4, one is astonished to find that apparently he makes no reference to subss. 6 and 7 of s. 8 of the Criminal Justice Act, 1948.

If these subsections are studied it will immediately be observed that they refer to a case where a person is convicted by another court of an offence committed during the probation period, etc., and that the phraseology is in direct contrast to subs. 1 which refers to a case where a person has both been convicted *and dealt with* in respect of an offence committed during the period in question.

It is well known that the legislation of the 1948 Act, dealing with probation, had as one of its objects the question of making it possible for a probationer to be dealt with finally in respect of his original offence by a court before whom he might subsequently appear and there seems no reason at all for supposing that subss. 6 and 7 were not designed in order to make it possible for this to be done as simply as possible.

It is submitted that the subsections are perfectly clear and mean what they say and that without any process whatsoever it is perfectly competent for the second court provided that it has the necessary consent and that the necessary facts are proved or admitted by the probationer to deal finally with the original offence without further ado. The rest of the section is designed to deal with cases where for one reason or other this course has not been pursued, but it would be most unfortunate if through some excess of caution courts began to consider it necessary to confuse the clear distinction between the procedure under subss. 6 and 7 and the procedure under subs. 5 of s. 8.

Yours faithfully,
C. WHITE,
Clerk to the Justices.

Magistrates' Clerk's Office,
35 Huntbach Street,
Hanley, Stoke-on-Trent.

[Our contributor, Mr. J. S. Allen, writes:

I am obliged to Mr. White for his letter. I agree that an offending probationer can be dealt with without the issue of a summons under s. 8 subss. 4, 5, 6, and 7. Unfortunately I did not make it clear in my article, that I was assuming proceedings under s. 8 *ab initio*, and not from the stage where the probationer is before the court. However, the main purpose of my article was to show the effect which s. 12 (1) has upon s. 8 in general, and this is in no way affected by your correspondent's observations.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"GIFT OF TONGUES"

I hope you will permit an old party, now far from home and the resources of civilization, the pedantry of pointing out, on A.L.P.'s agreeable article in your issue of January 18, that this well-known phrase has nothing to do with the right use of English; or indeed with linguistic studies, at all.

The phrase comes to us from the second chapter of Acts, describing the remarkable experience and performance of the Apostles, on the first Pentecost after the Crucifixion.

The narrative is not too clear; and has occasioned much controversy, from then until now. But Corinthians 1–12 throws a flood of light on it—and indeed on the further chapters which follow, "If I speak with the tongues of men and of angels," etc.

These are different gifts (the Apostle says) and different kinds of service, and different activities. To one man the Spirit gives "the word of wisdom," to another "the word of knowledge," to another faith, to another the gift of healing and to another the gift of prophecy, to another the power to interpret; to another the gift of "tongues," and to another, the gift of explaining what "tongues" say.

And it is clear, from what follows, that "tongues" were a kind of "enoblement"—inferior to preaching and prophecy, because frankly unintelligible; but nevertheless supposed to be inspired, and acceptable as such.

But certainly not acceptable in Acts of Parliament, statutory instruments, etc.!

Yours faithfully,
H. F. SCOTT STOKES.

Wengen, Switzerland.
January 22, 1958.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

The use of the term "unqualified," in the lawyer clerk controversy, reminds me of an elderly managing clerk I met in England last summer. "Never," he urged, "let them call you unqualified. Unadmitted, perhaps; but by no means unqualified."

Yours faithfully,
J. R. NORTON-AMOR,
Clerk to the Justices.

Magistrates' Court,
Gibraltar.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MOTORING OFFENCES

At question time in the Commons, Mr. R. G. Page (Crosby) asked the Secretary of State for the Home Department if in view of the fact that the average fine upon conviction for motoring offences during 1956 was only £2 7*s.* 4*d.* and in respect of offences against pedestrian crossings only £1 5*s.* 10*d.*, he had specifically called attention of magistrates to the maximum fines which could be imposed under the Road Traffic Acts.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that in a circular addressed to clerks of the peace and clerks to justices in September, 1956, his predecessor had drawn attention to the provisions of the Road Traffic Act, 1956, which increased maximum penalties for certain motoring offences, including offences against regulations about pedestrian crossings, and to the suggestion made by the Lord Chancellor in the course of the debates on the Road Traffic Bill that magistrates' courts might be well advised to review the scale of penalties which they customarily imposed in motoring cases in the light of the gravity of the problem of road safety and the fall in the value of money. He did not think that any further action on his part was called for at present.

Mr. Page then asked to what extent the increased activity of the Metropolitan Police in enforcing motoring law had resulted from increases in manpower, police vehicles or scientific aids, respectively.

Mr. Butler replied that during the last three years the number of Metropolitan Police officers engaged mainly on the enforcement of the Road Traffic Acts had increased by 32, and the number of motor vehicles had increased by 20. During the same period the number of summonses and written cautions for offences under those Acts had risen by about 25 *per cent.*; but it was not possible to say how far that increase was due to changes in the law, to the deployment of more officers and vehicles on road traffic duties or to other factors.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Wednesday, February 5

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS) BILL—read 1a.
ENTERTAINMENTS DUTY BILL—read 3a.
IMPORTS DUTY BILL—read 3a.

Friday, February 7

MATRIMONIAL PROCEEDINGS (CHILDREN) BILL—read 2a.
MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) BILL—read 2a.
MARRIAGE ACTS AMENDMENT BILL—read 2a.

PERSONALIA

OBITUARY

Mr. Francis George Rowland has died at the age of 74. Mr. Rowland was a puisne Judge of the Patna High Court, India, from 1936 to 1944 and returned to this country in 1946. He was first a district Judge in Bengal, before being appointed a puisne Judge of the High Court.

Mr. William Oliver Luscombe, B.A. (Oxon.), clerk to East Grinstead, Sussex, magistrates since 1941 has died after being ill for more than a year. He was a member of the firm of solicitors, Messrs. Whitley, Hughes and Luscombe. Mr. Luscombe was admitted in July, 1914.

Mr. Claud Randall Royle, coroner for Scarborough, Yorks., since 1930, has died at the age of 71.

BILLS IN PROGRESS

1. **Overseas Resources Development Bill.** An Act to make provision as to the areas in which the Colonial Development Corporation may operate, and to increase the sums which may be borrowed by the Corporation or advanced to them by the Secretary of State.

2. **House of Commons (Redistribution of Seats) Bill.** A Bill to amend the House of Commons (Redistribution of Seats) Act, 1949.

NEW STATUTORY INSTRUMENTS

1. **CUSTOMS AND EXCISE.** The Import Duties (Drawback) (No. 3) Order, 1958.

This order provides for the payment of drawback of Customs duty on certain fibre hardboard used in the manufacture of exported flush doors.

Came into operation February 5, 1958. 1958. No. 132.

2. **AGRICULTURE.** The Wheat Commission (Dissolution) Order, 1958.

The Agriculture Act, 1957 (Appointed Day) (No. 2) Order, 1957, brought into operation on November 30, 1957, preparatory to the dissolution of the Wheat Commission and the repeal of the Wheat Acts, 1932 to 1940, subs. (2) of s. 10 of the Agriculture Act, 1957, so providing for the payment to the Minister of Agriculture, Fisheries and Food of any money then standing to the credit of the Wheat Fund and transferring to him any other assets and any liabilities and obligations of the Wheat Commission constituted under the Wheat Act, 1932.

The accounting provisions relating to the Wheat Fund having been complied with the present order dissolves the Wheat Commission on January 31, 1958.

By virtue of this order and of the provisions of ss. 10 and 36 of the Agriculture Act, 1957, the Wheat Acts, 1932 to 1940 cease to have effect on the same date.

Came into operation January 31, 1958. 1958. No. 125.

3. **CUSTOMS AND EXCISE.** The Silk Duties (Drawback) (No. 1) Order, 1958.

This order (a) repeals certain obsolete provisions for drawback of Customs duty on silk and artificial silk goods; (b) reduces the rate of drawback allowable on silk yarns and most silk tissues produced in the United Kingdom from imported materials, and on made-up articles manufactured from such yarns and tissues; (c) reduces the rate of drawback allowable on made-up articles manufactured from imported artificial silk tissues. The first schedule to the order sets out in consolidated form the rates of drawback on silk and artificial silk goods allowable under s. 4 of the Finance Act, 1925, including those rates not reduced by the order.

Came into operation February 1, 1958. 1958. No. 121.

4. **CUSTOMS AND EXCISE.** The Import Duties (Exemption) (No. 1) Order.

This order exempts poliomyelitis vaccine, Salk type, from duty under the Import Duties Act, 1932, for a period of six months from February 1, 1958.

Came into operation February 1, 1958. 1958. No. 118.

A.L.P.'s usual article does not appear this week owing to indisposition.—*Ed., J.P. & L.G.R.*

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Landlord and Tenant—*Payment of rent during currency of notice to quit—Form of receipt, etc.*

Where the council, because of arrears of rent, serves notice to quit on a tenant of a council house in the housing revenue account (and therefore not subject to the Rent Acts), is it possible, without invalidating such notice to quit, for the council to receive arrears of rent offered by the defaulting tenant, after such notice to quit has been served, *i.e.*, both during the currency of the notice and after its expiry ? If it is possible to receive such arrears without serious consequences to the council's position, how should the receipt be worded ?

Assuming that the council then serve the notice of intention under the Small Tenements Recovery Act, 1838, and the justices eventually issue a warrant for possession, should such rent arrears be received before the warrant of possession has been granted by the justices ?

The justices, in a case under the Act of 1838, cannot make an order for payment of rent arrears, so action has to be taken in the county court for the recovery of the rent owing to the council. I have read your opinion at 100 J.P.N. 95, which refers to waiver of notice to quit at common law, but I cannot understand the reference to common law there, since the council takes action under the statute of 1838. I have also seen your opinion at 117 J.P.N. 46, and I would like to know whether this applies to my question above regarding the county court, in view of the fact that my question concerns a council house in the housing revenue account.

But the main difficulty is, should arrears of rent and also current rent be accepted from council tenants during the currency of notices to quit in the circumstances stated ? The council do not wish to prejudice their ultimate desire to get possession of certain houses whose tenants are in arrears, and at the same time do not want to invoke the criticism of the chairman of the bench and/or the county court Judge by refusing rent when offered.

In this connexion, is there a distinction in your advice as between arrears of rent and current rent accruing ?

DILLIN.

Answer.

The answer at 117 J.P.N. 46, refers back to earlier issues, and you may find it helpful to look at these. The answer at 100 J.P.N. 95 spoke of common law, because notice to quit, and the subsequent relation of the parties, are matters of common law. The Small Tenements Recovery Act, 1838, does not govern them. It may be worth while to remark (as we have said before) that in regard to notices to quit it is strictly a misnomer to speak of waiver. The common mention of waiver in this context may arise from the analogy of forfeiture. Thus in *Keith Prowse* v. *National Telephone* Co. (1894) 58 J.P. 573, cited in our earlier answer for the effect of receiving rent after the contractual relation has ended (actually in that case a hiring agreement, not a tenancy) there are several references to waiver by counsel and by the reporter (not, we think, by Kekewich, J., himself), but the decision was avowedly based upon *Davenport* v. *R.* (1877) 3 App. Cas. 115, which was a case of forfeiture, and itself followed *Croft* v. *Lumley* (1856) 6 H.L. Cas. 672, another case of forfeiture. Where a tenancy ends by effluxion of time or by notice to quit, and the tenant does not go out of possession, the question which has to be decided in any legal proceedings thereafter is whether a new tenancy has been created. Before the Rent Restriction Acts, and the invention of statutory tenancies, the Judges disliked leaving things in the air, and were inclined to construe the conduct of the parties, where capable of being so construed, as evidence that a new tenancy had been created by agreement.

This is why it was and still is prudent, when money is accepted after notice to quit, to make it plain by some written document, that the payment is (as the case may be) arrears of rent in respect of the period before the notice to quit was given, or rent for the period during which the notice to quit was current, or finally (if payment is accepted on account of any period during which the ex-tenant remains on the premises) that it is not made and received as rent at all.

Where the landlord's chief object is to get possession, it may be wisest not to accept any money at all in respect of the ex-tenant's occupation after the notice to quit has expired. But there is no danger in accepting arrears or accepting rent which accrues while the notice to quit is unexpired, if a proper receipt is given. We agree that justices making an order under the Small Tenements Recovery Act, 1838, have no power to order payment of rent which has become due, but the giving of notice to quit followed by a notice of intention under that Act does not deprive the landlord of his remedy in the county court, or by distraint.

2.—Licensing—*Registered club—Admission of non-members to functions—Whether proper to admit as temporary members.*

We have been consulted by two clubs, one a social club and the other a golf club, with regard to the legal position arising when the club holds a function, such as a dance or concert, to which persons other than members are admitted. We have previously taken the view that such non-members cannot purchase any intoxicating liquor whilst on the club premises without an offence against s. 120 (1) of the Licensing Act, 1953, being committed by the club and the individual being guilty of aiding and abetting the offence, but we are aware nevertheless that in fact such persons are often permitted to make such purchases.

As far as we know there has been no recent change in the law on this point but in this district, as elsewhere, the number of clubs is increasing and in consequence such functions are becoming more common, thus making clarification of the legal position more necessary than ever.

We have been considering whether it would be possible for the position of the clubs and such persons to be regularized by the club adopting a rule to the effect that, on the occasion of a club function to which persons who would otherwise be non-members are admitted, such persons upon payment at least 48 hours before the function of the price of admission to the function shall be admitted as temporary members of the club for the duration of the function.

We appreciate that the rule of a club cannot legalize what is in fact illegal, but it does occur to us that the adoption of such a rule avoids to a very great extent, if not completely, the possibility of the club being struck off the register for any of the reasons contained in s. 144 (1) of the Licensing Act, 1953, and in particular subs. (*g*) thereof.

We should be much obliged to have your views upon the effect of the adoption of such a rule and generally upon the matter.

O. CLUBMAN.

Answer.

Our correspondent correctly sets out the law in the first paragraph of his letter.

It is well known that many devices are employed to give an appearance of legality to sales of intoxicating liquor to people who visit clubs, having no interest in the club's declared objects, without formal nomination and election by the club's committee, and without assuming any obligation which the club's rules impose as an incident of membership. The proposed rules mentioned by our correspondent whereby the people who attend functions held at the club premises may be admitted as temporary members " for the duration of the function " is one such device.

3.—Magistrates—*Certificate of dismissal—Issue in cases where not required by statute.*

Would you please state whether:

(*a*) Magistrates may issue a " certificate of dismissal " after the dismissal of an information or complaint heard on its merits, other than in cases dealt with under the Offences Against the Person Act, 1861, or the Army and Air Force Acts, 1955.

(*b*) If so, would the certificate be in the form of an extract from the court register as provided by r. 56, Magistrates' Courts Rules, 1952, and would it be issued at the discretion of the magistrates ?

K. SPEAD.

Answer.

(*a*) and (*b*) In the two cases referred to in the question there is statutory authority for the issue of a certificate which, in the Army Act case, is to be given by the clerk. Such certificates are clearly admissible in evidence to prove the matters to which they relate. Where there is no statutory requirement or authority for the issue of a certificate we think that a certified extract under r. 56, *supra*, must be relied upon. This is certified by the clerk in whose custody the register is under r. 54 of the Magistrates' Court Rules, 1952, and such an extract should in our view be issued and certified by the clerk, whenever he is satisfied that it is required for use in any legal proceedings.

4.—Magistrates—*Practice and procedure—Fining and binding over for the same offence.*

A defendant was charged under subs. (*b*) and (*c*) of s. 11 of the Post Office Act, 1953 (enclosing indecent written communications and sending indecent communications on postcards) and was dealt with summarily, being fined for subs. (*b*) charges and bound over to be of good behaviour for subs. (*c*) charge.

Prosecuting solicitor asked that the defendant be fined and bound over on all the charges but could not quote an authority empowering the justices to do this. It is appreciated that justices can fine and bind over for a common assault, but can they do so for a statutory offence such as the one quoted, and if so, what is the authority empowering them to do so ?

HEWON.

Answer.

Although there may be no statutory authority for this course, we have no doubt that it is legal. The justices are performing two different functions in so doing. In dealing with the actual offence by way of fine, they are acting as a court empowered to do so by the statute creating the offence and they have then exhausted their jurisdiction in that respect. It is then open to the prosecutor or to the court itself to suggest that, in order to prevent a repetition of the offence, the justices should use their power under the statute 34 Edw. 3, c. 1, to bind over the defendant who is then before them as a person likely to repeat the offence. The Magistrates' Courts (Appeals from Binding Over Orders) Act, 1956, in permitting such appeals, has rendered the decision in *R.* v. *London Sessions, ex parte Beaumont* [1951] 1 K.B. 557; 1 All E.R. 232; 115 J.P. 104 superfluous, but we suggest that the judgments in that case are still very much in point insofar as the Divisional Court accepted the principle that an offender can be fined and bound over.

On the facts outlined by our correspondent, it must be assumed that the court, while convicting on the second charge, decided to impose no penalty and then went on to bind over the defendant.

5.—Road Traffic Acts—*Attempting to drive while drunk and drunk in charge—Both charges heard together by consent—Conviction on both ?*

A defendant was charged with (i) attempting to drive under the influence of drink (s. 15, Road Traffic Act, 1930) *and* (ii) when in charge of a motor vehicle being unfit to drive (s. 9, Road Traffic Act, 1956).

He consented to being dealt with summarily and to having both charges heard together, and pleaded not guilty to both. His solicitor indicated that it was conceded that the defendant was under the influence and unfit to drive.

After hearing the evidence, my justices found that the defendant was guilty of being under the influence, etc., and that he was in charge of the vehicle, and also that he attempted to drive it. They fined him and disqualified him on charge (i).

The defendant's solicitor suggested the register should be marked "not separately dealt with." It was actually marked "convicted but not separately dealt with."

I have now received a letter from the defendant's solicitor to the effect that he is considering an appeal, and should he appeal against both convictions If the conviction had been on the s. 9 offence only and no disqualification order, it is unlikely that there would have been an appeal. Also on a conviction on the lesser charge only, presumably, there would have been a dismissal on the first charge. As matters went, it seemed that the greater charge contained the lesser, and that a dismissal of the lesser charge would not be consistent.

My justices did not want to punish on both charges, although I think they may have done so on the authority of *Williams* v. *Haslam* (1943) L.J.K.B. 353, "where a person agreed to two charges being tried together and the facts were the same, it was held that he was precluded from objecting to being convicted and punished on both charges." Section 33 of the Interpretation Act, 1889, was also considered.

Your opinion is sought on the issues raised generally, and particularly on the point of appealing against (i) only, or against (i) and (ii).

JOSSET.

Answer.

It would have been more satisfactory to have heard the charges separately because had there been a conviction on the graver charge the hearing of the lesser could then have been adjourned until any question of appeal had been decided. By agreeing to have both charges heard together the defendant made it impossible for this course to be adopted and, with some hesitation, we think that on the authority of *Williams* v. *Haslam, supra,* the convictions on both charges can be supported.

So far as the appeal is concerned, if the defendant appeals successfully against (i) he is left with a conviction on (ii) but with no penalty. If he appeals against both and succeeds on (1) but fails on (ii) the appeal court may take the view that they have power to vary the magistrates' court's order by adding a penalty. The defendant's adviser must consider the possibilities and, having regard to all the facts of the case, he must advise his client accordingly.

6.—Road Traffic Acts — *Insurance — Trailer attached — No exclusion of liability in policy when trailer attached.*

A is driving his motor vehicle on a road towing a trailer and is stopped by the police and asked to produce his certificate of insurance. He later produces a cover note and the policy which is a policy issued to A for use for social, domestic and pleasure purposes by him and for use by him in person in connexion with his business or profession, excluding use for hiring, commercial travelling, racing, pace-making, speed testing, the carriage of goods or samples in connexion with any trade or business, excepting farming and any purposes in connexion with the motor trade. There are certain exceptions specially endorsed on the policy but nowhere does the towing of a trailer appear as a special exception.

I have carefully considered the point and have come to the conclusion that under the Road Traffic Act it is only necessary for A to insure the use of the motor car against third party risks and it is not necessary for the trailer to be so insured and that it could be argued that to use a motor vehicle for social, domestic or pleasure purposes could include the towing of a small trailer and that unless the policy specifically excludes the towing of a trailer A is covered. The wording of the policy must be strictly adhered to and nowhere in the policy is the towing of the trailer excluded. I have searched for a case on this point and although one went to the High Court in 1940 (*Rogerson* v. *Stephens* [1950] 2 All E.R. 144; 114 J.P. 372) the case was decided on an altogether different ground and the Lord Chief Justice declined to give any opinion upon this matter at issue.

LOLAN.

Answer.

On the facts given in the question our view is that there is in force a policy covering the use of the motor vehicle.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*).

WEST DEAN RURAL DISTRICT COUNCIL

Clerk to the Council

APPLICATIONS are invited for the above appointment which will become vacant on September 30, 1958, on the retirement of the present holder.

The appointment will be subject to the conditions of service of the Joint Negotiating Committee for Town Clerks and District Council Clerks. Salary will be in the population range 15–20,000 (£1,460—£1,680).

The person appointed will be required to act as Registrar of Local Land Charges and Returning Officer at local elections. All fees and payments, except those received as Returning Officer, shall be paid to the credit of the Council's account.

The appointment will be subject to the provisions of the Local Government Superannuation Acts, the passing of a medical examination, and will be terminable by three months' notice on either side.

Applications, stating age, qualifications and full particulars of experience, and giving the names of three referees, should reach the undersigned not later than Wednesday, February 26, 1958.

H. A. JONES,
Clerk to the Council.

Council Offices, Coleford, Glos.

GRIMSBY BOROUGH MAGISTRATES' COURTS COMMITTEE

Appointment of Clerk to the Justices

APPLICATIONS are invited from Barristers, Solicitors, and those qualified in accordance with Section 20 of the Justices of the Peace Act, 1949, for the whole-time appointment of Clerk to the Justices for the Borough of Grimsby, with a population of 95,400.

The commencing salary will be fixed, according to qualifications and experience, within the range £1,845–£2,120. The appointment will be superannuable, subject to medical examination and to the giving of three months' notice on either side. The successful applicant will be required to take up the appointment not later than May 1, 1958.

Applications, giving full particulars of qualifications and experience, together with the names of two referees, should be forwarded to the undersigned before February 21, 1958.

W. A. HOULTBY,
Clerk of the Committee.

St. Mary's Chambers,
Grimsby.

COUNTY OF NORTHAMPTON

Assistant Solicitor

APPLICATIONS are invited for the above post in my office at a salary within the scale £800—£1,100 according to experience, which need not be in local government.

Applications, stating age, education, qualifications and experience, together with the names of two referees, must reach the undersigned not later than March 1, 1958.

J. ALAN TURNER,
Clerk of the County Council.

County Hall,
Northampton.

NOTTINGHAMSHIRE MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of First Assistant (next in seniority to the Deputy Clerk) in the office of the Clerk to the Justices for the Borough and Petty Sessional Division of Mansfield (population approximately 165,000). Candidates must have a good general knowledge of the work of a Justices' Clerk's office and previous Court experience will be an advantage. Salary within Grade "C" of the Senior Clerks' Division of the Joint Negotiating Committee for Justices' Clerks' Assistants, whose Conditions of Service will be applicable. The appointment is superannuable and will be subject to medical examination and to one month's notice on either side.

Applications, with copies of two recent testimonials, to be sent to the Clerk to the Justices, 70 Nottingham Road, Mansfield, Notts., not later than Monday, February 24, 1958.

GEORGE NORTON,
Clerk of the Committee.

CITY AND COUNTY OF NORWICH

Assistant Solicitor

APPLICATIONS are invited from young Solicitors interested in local government for the position of Assistant Solicitor at a salary in the scale £800—£1,120.

The appointment will be subject to the provisions of the Local Government Superannuation Acts and to termination by one month's notice. Relationship to any member or officer of the Council must be disclosed and canvassing directly or indirectly will be a disqualification.

Applications, stating age, qualifications and experience, and accompanied by copies of two recent testimonials, should be delivered to the Town Clerk, Norwich, not later than February 22, 1958.

BOROUGH OF BACUP

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors with previous local government experience for the appointment of Town Clerk, at a commencing salary of £1,395 per annum, rising by three annual increments of £60 and one of £45, to £1,620 per annum. The Recommendations regarding salary and conditions of service of the Joint Negotiating Committee for Town Clerks and District Council Clerks will apply.

The appointment will be subject to three months' notice on either side and to the provisions of the Local Government Superannuation Acts. The successful candidate will be required to pass a medical examination.

Applications, stating age, experience and qualifications, and the names of not more than three persons to whom reference can be made, must reach the undersigned not later than Thursday, February 20, 1958. Candidates should state whether they are related to any member or senior officer of the Council, and canvassing in any form will disqualify.

ROBERT POTTER,
Town Clerk.

Stubbylee Hall, Bacup.

SURREY PROBATION AREA

Appointment of Full-time Male Probation Officers

APPLICATIONS are invited for appointment as male Probation Officer in the Surrey Probation Area.

The appointments will be subject to the Probation Rules, and the salary will be in accordance with those Rules, subject to superannuation deductions.

Written applications, with the names and addresses of not more than three persons to whom reference may be made, should be submitted not later than March 8, 1958. Forms of application may be obtained from the undersigned.

G. A. NOPS,
Secretary of the
Surrey Probation Committee.

County Hall,
Kingston-upon-Thames.

COUNTY OF THE ISLE OF ELY COMBINED PROBATION AREA

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment, which will become vacant on March 1, 1958, and which will be subject to the Probation Rules, 1949–57.

The successful candidate will be required to pass a medical examination.

Travelling and subsistence allowances will be paid in accordance with the prescribed scale.

Applications, stating age, qualifications and experience, together with the names and addresses of two referees, to be received by the undersigned by February 22, 1958.

R. F. G. THURLOW,
Clerk of the
Probation Committee.

County Hall, March, Cambs.

THE RURAL DISTRICT COUNCIL OF GODSTONE

Appointment of Clerk of the Council

APPLICATIONS are invited for the above appointment, preferably from Solicitors with wide experience of local government law and administration.

The appointment is subject to the conditions of service recommended by the Joint Negotiating Committee for Town Clerks and District Council Clerks.

Commencing salary, having regard to experience, within the range £1,625 to £1,845, plus increments according to scale.

The person appointed will be required to commence duties on July 1, 1958, and the appointment is subject to three months' notice of termination on either side.

Applications, stating age, qualifications and details of present and past appointments and experience, together with names and addresses of three referees, should be sent to the undersigned not later than February 26, 1958.

Canvassing in any form will disqualify.

F. W. WALPOLE,
Clerk of the Council.

Council Offices,
Oxted, Surrey.
February 4, 1958.